

**BOUNDARY CONFLICTS IN MISSOURI; BEND PINE NURSERY
LAND CONVEYANCE ACT; RIO GRANDE OUTSTANDING
NATURAL AREA; ACQUISITION OF PROPERTY IN UTAH;
AND LANDS IN MENDOCINO NATIONAL FOREST**

HEARING
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
OF THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION
ON
S. 1167 S. 1848
S. 1209 H.R. 708
S. 1467

NOVEMBER 18, 2003



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CONTENTS

STATEMENTS

	Page
Bennett, Hon. Robert F., U.S. Senator from Utah	4
Bobicki, Charlotte, County Commissioner, Alamosa County, CO	25
Bond, Hon. Christopher S., U.S. Senator from Missouri	1
Booth Doyle, Kate, San Luis Valley Ecosystem Council, Colorado	28
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado	7
Craig, Hon. Larry E., U.S. Senator from Idaho	1
Hughes, Jim, Deputy Director, Bureau of Land Management, Department of the Interior	14
Talent, Hon. James M., U.S. Senator from Missouri	9
Thompson, Tom, Deputy Chief, National Forest System, Forest Service, De- partment of Agriculture	10
Wyden, Hon. Ron, U.S. Senator from Oregon	8

APPENDIX

Additional material submitted for the record	35
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RIO GRANDE OUTSTANDING NATURAL
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UTAH; AND LANDS IN MENDOCINO NA-
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TUESDAY, NOVEMBER 18, 2003

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 2:31 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

**OPENING STATEMENT OF HON. LARRY E. CRAIG,
U.S. SENATOR FROM IDAHO**

Senator CRAIG. The Subcommittee on Public Lands and Forest will be convened. My colleague Ben Nighthorse Campbell and I have opening statements.

But I understand, Senator Bond, you are on a bit of a tight schedule. So we will withhold and take your testimony first, and then you are certainly welcome to leave if you wish before we convene our panelists. So with that, please proceed.

**STATEMENT OF HON. CHRISTOPHER S. BOND,
U.S. SENATOR FROM MISSOURI**

Senator BOND. Thank you, Mr. Chairman. And I very much appreciate the opportunity to testify. I appreciate your holding the hearing for this bill that Senator Talent, a member of this committee, and I have introduced. Let me try to summarize it for you.

This is the Mark Twain National Forest Reserve and Boundary Readjustment Act introduced on June 2 of this year. It deals with a very messy and unfortunate property line dispute in Barry and Stone Counties, Missouri, next to the Cassville District of the Mark Twain National Forest and to Table Rock Lake.

About in the early 1960's and 1970's, the Corps of Engineers, who were private surveyors, went around and tried to lay out the boundary lines in that area, using—they found that the original corner monuments that were established by the General Land Office had disappeared. So they used existing de facto land markers in the vicinity of the original GLO monuments. But as you can

imagine, for 30 years, the landowners in Barry and Stone Counties bought and sold land in good faith based on these surveys and on what the Federal Government told them were the property lines.

Well, several years ago, the Forest Service performed new land surveys using new surveying technology, and now claims that the boundary lines conflict with—there are different boundary lines, and the Forest Service said the Corps' surveys are incorrect and they are all in the wrong places. And now, the Forest Service is telling private landowners that their land or some of their land belongs to the Federal Government and they are going to have to reimburse the Forest Service.

Well, you might guess that that has caused a bit of consternation, to put it gently. I have, just as one example, a statement I would ask to be included in the record after my testimony from Mr. Don Ayers, a former active realtor in the area and one who is a victim of the boundary line dispute.

Senator CRAIG. Without objection, that will be included.

Senator BOND. He said he was in a position to place cautionary contingencies in every listing for sale in the area, and it has made it extremely difficult to sell property, and listings have been withdrawn because of the uncertainty. But now he is a property owner who has been told by the Forest Service that his property encroaches on Federal land, and he cannot sell the property. It has been on the market for 18 months, and he is totally tied up on this.

I really think this is unfair and devoid of any common sense. My staff and I have worked and have asked the Forest Service and the Corps to work together, but they cannot agree. In the meantime, the people who live there are continuing to be deprived of the use and the ability to sell their property.

And that is why we have concluded that legislation is the only way to solve the boundary of property. It authorizes the Secretary of Agriculture to convey without consideration title to land on which there is a boundary conflict with adjoining Federal land if the landowner can demonstrate a claim of ownership because they relied on a land survey performed or approved by the Federal Government previously.

Obviously, the local governments in the area strongly support it. A similar version of this legislation, sponsored by Representative Roy Blunt of southwest Missouri who has this in his district, passed the House last night. And I would ask you, out of a sense of fairness to the beleaguered property owners who have been sliced and diced by the Federal Government, to pass this legislation.

Thank you.

[The prepared statement of Senator Bond follows:]

PREPARED STATEMENT OF HON. CHRISTOPHER S. BOND,
U.S. SENATOR FROM MISSOURI

Mr Chairman, I want to thank you for allowing me to testify before this committee today regarding legislation I have introduced to resolve a very unfortunate situation that has developed in Southwestern Missouri. I also want to thank my colleague from Missouri and member of this committee, Senator Jim Talent, who is a co-sponsor of this important legislation.

On June 2, 2003, I introduced S. 1167, the Mark Twain National Forest Resurvey and Boundary Readjustment Act of 2003, which would resolve the unnecessary property line disputes in Southwestern Missouri that have resulted from conflicting

federal government land surveys performed by the U.S. Army Corps of Engineers (Corps) and the United States Forest Service (USFS), respectively. The land involving these disputed property lines is located in the vicinity of the Cassville District of the Mark Twain National Forest in Barry and Stone Counties adjacent to Table Rock Lake.

In order to understand this legislation, some historical background is necessary. During the late 1960's and early 70's, the U.S. Army Corps of Engineers, through various private land surveyors, surveyed this area around Table Rock Lake. In its surveys, the Corps found that most of the original "corner monuments" or boundary lines laid out by the U.S. General Land Office (GLO) in its original surveys performed in the 1840's were either lost, stolen or had eroded over the years.

Instead of the original GLO monuments, Corps surveyors used existing de-facto land markers in the vicinity of the original GLO monuments as the basis for its new surveys. Prior to the Corps surveys, these de-facto monuments were recognized by local surveyors as the legitimate boundary markers and were used in survey after survey over the decades.

For almost 30 years, private landowners in Barry and Stone Counties bought and sold their land in good faith based on the surveys performed by the Corps in the 60's and 70's. However, several years ago, the USFS performed new land surveys using surveying technology that had only recently become available. As a result of these new surveys, the USFS now claims that the boundary lines in its surveys conflict with the boundary lines established in the previous corps surveys. In addition to this, the USFS has announced that the Corps surveys are incorrect and that property lines all over this area are in the wrong place.

Because of these new revelations, many private property owners in the vicinity of the Mark Twain National Forest, who bought and paid for their land in good faith based on a previous federal government survey, are now being told that they have encroached on USFS land.

The USFS has even begun telling these private landowners that their land now belongs to the federal government, and that they will have to reimburse the USFS for the federal land that the landowners now own and occupy. Naturally, these actions have produced chaos, confusion and anger among landowners in these two counties.

For example, Mr. Don Ayres of Shell Knob, MO states, "As a former active realtor in this area, I was in a position to place such a cautionary contingency in every listing for sale of property with a similar problem and there were many. It is very difficult to sell a piece of property when the potential buyer is looking at a dispute with a large federal agency (USFS). In at least one instance I know of, a listing was withdrawn because of the uncertainty of the dispute."

Not only is Mr. Ayres a realtor who has had his business impacted by these property disputes, but he is also a property owner who has been informed by the USFS that his property now "encroaches" on federal land. Like other property owners in the area, Mr. Ayres has had difficulty selling his property because of the aforementioned cautionary contingency required under disclosure. His property has been on the market for about 18 months, and he has yet to receive a contract to purchase it from a potential buyer. I would like permission to submit a copy of Mr. Ayres' statement regarding the problems that have resulted from these disputes for the committee record.

Needless to say, it is inherently unfair and absolutely devoid of any common sense to expect private landowners to compensate the federal government for land that they have already purchased simply because the government has changed its collective mind about where federal property begins and ends.

Over the past two years, I have repeatedly asked the USFS and the Army Corps of Engineers to work together to find a solution that would resolve this problem. Unfortunately, after two years of debate and disagreement, the Corps of Engineers and the USFS have been unable to agree on a resolution of this problem. In the meantime, the lives of many of these Missouri residents continue to be disrupted.

Therefore Mr. Chairman, I have concluded that federal legislation represents the only feasible solution to this boundary problem. This legislation authorizes the Secretary of the Agriculture to convey, without consideration, title to land in which there is a boundary conflict (with adjoining federal land) to private landowners, who can demonstrate a claim of ownership because they relied on a subsequent land survey performed or approved by the federal government.

This legislation is supported by the City of Cassville, the Presiding Commissioner of Barry County and the countless number of property owners who have been victimized by these unnecessary boundary disputes.

A very similar version of this legislation, H.R. 2304, sponsored by Rep. Roy Blunt passed the House of Representatives last night.

In closing, I urge you to pass this important legislation out of committee and send it to the Senate floor for a vote.

Mr. Chairman, members of the committee, once again, I would like to thank you for an opportunity to testify on behalf of S. 1167

Senator CRAIG. Well, Mr. Chairman, thank you very much for that testimony. All additions will become a part of the record. And we thank you for that.

Senator BOND. Thank you very much, Mr. Chairman.

Senator CRAIG. Thank you.

Before I turn to my other colleagues, we will go ahead with our opening statements. Senator Talent, we will come to you on this issue. We have just heard from Senator Bond in relation to S. 1167.

Senator Bennett will not be here this afternoon, so I will put his testimony in the record as it relates to S. 1209, a land acquisition bill that he has introduced.

[The prepared statement of Senator Bennett follows:]

PREPARED STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

Thank you, Mr. Chairman, for this opportunity to present testimony to the subcommittee on S. 1209. The bill would provide for the acquisition of property in Washington County, Utah, for the implementation of a desert tortoise habitat conservation plan. I come to speak in favor of this solution that would bring to a close the federal acquisition of privately held land, located within the federally designated desert tortoise reserve in Washington County, UT. This is an acquisition that, in my opinion, is long overdue. Mr. Chairman, I would also like to ask consent that testimony for the Washington County Commission, who are fully supportive of this legislation, be submitted for the record.

As I'm sure many of you are aware, this is not the first time legislation has been introduced in an attempt to resolve this issue. In July 2000, I introduced S. 2873, which was referred to and eventually reported favorably by the Committee on Energy and Natural Resources. In addition, similar legislation was twice approved by the House, in both the 106th and 107th Congress. Nevertheless, we have so far been unable to resolve this issue in the full Senate.

For nearly a decade, the private property addressed by this bill has been under federal control during which time the federal government has been enjoying the environmental benefits of the property without remitting any sort of compensation to the landowner. The time has finally come to resolve this unfair arrangement.

First, let me begin with an account of the background leading up to this legislation.

In March 1991, the desert tortoise was listed as an endangered species under the Endangered Species Act. Researchers, both governmental and environmental, determined that the land immediately north of St. George, UT, was prime desert tortoise habitat. Consequently, in February 1996, nearly five years after the listing, the United States Fish and Wildlife Service (USFWS) issued Washington County a section 10 permit under the Endangered Species Act which paved the way for the adoption of a habitat conservation plan (HCP) and an implementation agreement. Under the plan and agreement, the Bureau of Land Management (BLM) committed to acquire all private lands in the designated habitat area for the formation of the Red Cliffs Reserve for the protection of the desert tortoise.

One of the private land owners within the reserve is Environmental Land Technology, Limited (ELT) which had, for purposes of residential and recreational development, begun acquiring lands from the State of Utah in 1981—ten years prior to the listing of the species. Also, in the years preceding the listing of the desert tortoise and the adoption of the HCP, ELT completed master planning of the property including appraisals, cost estimates, engineering studies, site plans, surveys, utility layouts, and right-of-way negotiations. They staked out golf courses, and obtained water rights for the development of this land.

Prior to the adoption of the HCP, it was not clear which lands the federal and local governments would set aside for the desert tortoise, although it was assumed that there were sufficient surrounding federal lands to provide adequate habitat. However, when the HCP was adopted in 1996, the decision was made to include ELT's lands within the boundaries of the reserve primarily because they contained high concentrations of tortoises. The tortoise population on ELT land also appeared to be one, if not the only, population without an upper respiratory disease that af-

flicted virtually all of the other populations. As a consequence of the inclusion of ELT lands, all development efforts were halted.

With assurances from the federal government that the acquisition of the ELT development lands was a high priority, the owner negotiated with, and entered into, an assembled land exchange agreement with the BLM in hopes of negotiating an intrastate land exchange. The private landowner then began the costly process of identifying comparable federal lands within the state that would be suitable for an exchange for his lands in Washington County. Over the last seven years, BLM and the private land owners, including ELT, have completed several exchanges, and the federal government has acquired, through those exchanges or direct purchases, nearly all of the private property located within the reserve, except for approximately 1,516 acres of the ELT development land. However, with the creation of the Grand Staircase-Escalante National Monument in September 1996, and the subsequent land exchanges between the state of Utah and the federal government to consolidate federal lands within that monument, there are no longer sufficient comparable federal lands within Utah to complete the originally contemplated intrastate exchanges for the remainder of the ELT land.

Faced with this problem, and in light of the high priority the Department of the Interior has placed on acquiring these lands, BLM officials recommended that the ELT lands be acquired by direct purchase. During the FY 2000 budget process, BLM proposed that \$30 million be set aside to begin acquiring the remaining lands in Washington County. Unfortunately, because this project involves endangered species habitat and the USFWS is responsible for administering activities under the Endangered Species Act, the Office of Management and Budget shifted the \$30 million from the BLM budget request to the USFWS's Cooperative Endangered Species Conservation Fund budget request. Ultimately, none of those funds were made available for BLM acquisitions within the federal section of the Reserve. Instead, the funds in that account were made available on a matching basis for the use of individual states to acquire wildlife habitat.

The lands within the Red Cliffs Reserve are ELT's main asset. The establishment of the Washington County HCP has effectively taken this property and prevented ELT from developing or otherwise disposing of the property. ELT has been brought to the brink of financial ruin as it has exhausted its resources in an effort to hold the property while awaiting the compensation to which it is entitled. ELT has had to sell its remaining assets, and the private land owner has also had to sell personal assets, including his home, to simply hold the property. This has become a financial crisis for the landowner.

It is simply wrong for the federal government to expect the landowner to continue to bear the cost of the government's efforts to provide habitat for an endangered species. This responsibility resides with the federal government. Moreover, while the landowner is bearing these costs, he continues to pay taxes on the property. This situation is made more egregious by the failure of the Department of the Interior to request any acquisition funding for FY 2004, even though the agency has repeatedly designated this acquisition as a high priority.

Over the past several years, ELT has pursued all possible avenues to complete the acquisition of these lands. The private land owner has spent millions of dollars pursuing both intrastate and interstate land exchanges and has worked cooperatively with the Department of the Interior. Unfortunately, all of these efforts have thus far been fruitless.

This bill will finally bring about this promised acquisition. It is my view that a legislative taking should always be an action of last resort. But, if there was ever a time that warranted legislative condemnation and intervention, this is it. This bill will transfer all right, title, and interest in the ELT development property within the Red Cliffs Reserve, including an additional 34 acres of landlocked real property owned by ELT adjacent to the land within the Reserve, to the federal government. It provides an initial payment to ELT to pay off existing debts accrued in holding the property, and provides 90 days for both ELT and the Department of the Interior to attempt to reach a negotiated settlement on the remaining value of the property.

I am aware that one of the difficulties in solving this issue is the high value of the lands to be acquired. Due to the absence of developable lands within the state for exchange, the legislation also authorizes an interstate land exchange as one possible tool available to the parties to ensure the acquisition. In the absence of a negotiated amount, the Secretary of the Interior will be required to bring an action in the Federal District Court for the District of Utah to determine a value for the land. Payment for the land, whether negotiated or determined by the court, will be made from the permanent judgment appropriation or any other appropriate account, or, at the option of the land owner, the Secretary of the Interior will credit a surplus

property account, established and maintained by the General Services Administration, which the land owner can then use to bid on surplus government property.

Unfortunately, when this bill has been introduced in the past, there has been occasional misunderstanding regarding the inclusion of the bill's reference to section 309(f) of Public Law 104-333, which requires all federal appraisals and acquisitions of land within Washington County to be conducted "without regard" to the presence of an endangered species. This reference does not create a new appraisal standard but rather restates the existing standard for all federal land acquisition in Washington County, UT. Since its enactment, the Department of the Interior has applied this standard to all its acquisitions in the county, without exception. This language was adopted to allay concerns that local landowners would not receive fair compensation for their property which was being acquired for government purposes. Some have supposed the inclusion of this language would constitute preferential treatment. To the contrary, the absence of this language would unfairly treat this landowner differently than every other landowner in the Reserve whose land has thus far been acquired by the federal government. Moreover, its omission at this point would likely lead the Justice Department to argue that Congress did not intend for this statutory standard to apply.

The bill also includes language to allow, as part of the legislative taking, for the landowner to recover reasonable costs, interest, and damages. It is important to realize that while federal acquisitions should be completed on the basis of fair market value, when the federal government makes the commitment to acquire private land, the landowner should not have to be driven into financial ruin while waiting upon the federal government to discharge its obligation. While the federal government has never disputed its obligation to acquire the property, it has had the benefit of the private land for all these years without having to pay for it. The private landowner should not have to bear the costs of this federal foot-dragging.

Clearly, this legislation is consistent with the high priority the Department of the Interior has repeatedly placed on this land acquisition, and is a necessary final step towards an equitable resolution. The time for pursuing other options has long since expired and it is unfortunate that it now requires legislative action. Without commenting on the Endangered Species Act itself, it would seem that if it is the government's objective to provide habitat for the benefit of an endangered species, it is the government that ought to bear the costs, rather than forcing them upon private citizens. It is also time to address this issue so that the federal agencies may be single minded in their efforts to recover the desert tortoise which remains the aim of the creation of the Reserve. It is time to right this wrong and get on with the efforts to recover the species and I encourage colleagues in this subcommittee to support the timely enactment of this important legislation.

Senator CRAIG. I would also welcome back to our committee Tom Thompson, Deputy Chief of the National Forest Service and Jim Hughes, a Deputy Director for the Bureau of Land Management. Gentlemen, thank you for being here who are here to testify on legislation.

I will also recognize my colleague from Colorado in a few moments to introduce others who are in attendance here from Colorado, a Charlotte Bobicki—did I pronounce that right?

Ms. BOBICKI. Close enough.

Senator CRAIG. Close enough, all right.

[Laughter.]

Senator CRAIG. And Kate Booth Doyle. And we appreciate them taking their time to be here to testify. I know that they have traveled a bit of a long distance to deal with an interesting issue and a fascinating concept that you are working on.

So we will be hearing testimony on five bills today, S. 1167, introduced by Senator Bond in June to resolve this boundary conflict that he spoke to; S. 1209, introduced by Senator Bennett, to acquire property in Washington County, Utah for the implementation of the desert tortoise habitat conservation plan. S. 1467 was introduced by Senator Campbell at the end of July, a bill to establish the Rio Grande Outstanding Natural Area in the State of Colorado; along with S. 1848 introduced this month by Senators Wyden and

Smith to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in Oregon.

And lastly, H.R. 708 was introduced in February 2003 by Congressman Mike Thompson of California and passed by the House of Representatives on November 8. The bill would require the conveyance of certain national forest lands in Mendocino National Forests in California, and would provide for use of the proceeds from the conveyance for national forest purposes.

I have decided to forgo any additional opening statement as it relates to the bills. We have those who are here to testify so that we can expedite this hearing this afternoon. Let me turn first to Senator Campbell. I will then turn to our ranking member, Ron Wyden, who has just come in. We are pleased you would join us, Ron. And then I will turn to our colleague from Missouri.

Senator Campbell.

**STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL,
U.S. SENATOR FROM COLORADO**

Senator CAMPBELL. Thank you, Mr. Chairman, and thank you for including my bill, S. 1467, to designate a stretch of the Rio Grande River as an Outstanding Natural Area. You have already introduced our two witnesses, so I will not do that again. But I noticed several other friends in the audience who are here that are very interested in this bill.

This bill deals with the Rio Grande River and its tributaries which rise in the San Juan Mountains and flow into the San Luis Valley. And the valley, like so much of Colorado, is very dependent on snow melt for water. In fact, 600,000 acres of irrigated farmland within the valley get only an average of seven inches of precipitation each year. So it goes without saying that the Rio Grande River is the lifeblood of the valley, and thousands of farmers and landowners depend on it, as well as the flora and fauna including several endangered species.

I might add, Mr. Chairman, we need to thank you, too, for your support of the Sand Dunes National Monument which is our attempt, which was very successful last year, to be upgraded to a National Park status, and the money we needed to buy out the private land to protect that very, very sacred place.

A lot of that area sits on a large underground body of water, and this snow melt is what recharges it every year. This legislation, S. 1467, is the product of a careful collaboration between interested stakeholders including environmental groups, landowners, farmers, government officials too.

These parties all recognize that in order to protect this important 33-mile stretch of watershed, something had to be done. And after much deliberation, they all agreed that designating that stretch of river from the southern edge of Alamosa National Wildlife Refuge to the New Mexico State line as an Outstanding Natural Area would be the best way to maintain its critical reach.

This bill establishes a commission made up of Federal, State and local stakeholders who are charged with developing a management plan to restore and protect the area. The Secretary of the Interior must review and approve the plan. And on approval, the Secretary

then must implement the management plan coordinating with State and local governments and cooperating with landowners, too. Private landowners, in fact, are encouraged to participate in the commission.

As in much of the West, the Rio Grande River's water is apportioned to downstream States through interstate compacts and, in fact, an international compact. Therefore, make no mistake about it, the bill does not include an implied or reserved water right.

It is supported by many. This bill is supported by local boards of county commissioners, local water users organizations, local cattlemen's associations and the environmental community, and affected private landowners, too. And as you know, Mr. Chairman, those are not often groups you see on the same side of any issue when we are dealing with land in the West.

So I look forward to the hearing and certainly invite my colleague, Senator Allard, who will be a co-sponsor of this bill, to testify if he happens to come in today.

Senator CRAIG. Thank you very much, Senator, for those opening comments and statements about that legislation.

Let me turn to the ranking member of the subcommittee for any comments he would wish to make.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you. Thank you, Mr. Chairman. I will be brief. Like all of us at the end of this session, I have to be in about three places simultaneously.

I just have a couple of comments about a bill that Senator Smith and I have been pursuing now for 4 years. It involves the community of Bend in our home State that wants to take title to property that the Forest Service has been eager to sell and which the park district in the area was eager to acquire for superb parks and ball fields.

We have been working on this for more than 4 years. We felt we had a bipartisan bill. Somehow every time the Forest Service has been involved, it has ended up taking more time and has ended up costing more money. They apparently, have another idea today which seems to be more of the same.

We hope that the committee will look favorably on the bipartisan legislation Senator Smith and I have introduced. It is embodied in the bill that the subcommittee is looking at today that would direct the sell of the Bend Pine Nursery to the Bend Pine Parks District for \$3.5 million. That figure was arrived at by assuming the \$3 million value of the property on the date the original act was passed, allowing for inflation per the Forest Service calculation, and then deducting the value of acreage the Forest Service decided not to sell, and 15 acres the Forest Service has the ability to transfer to a local school district at no cost.

But as a result of all of this delay, I mean we looked at one point recently at a cost of \$5.8 million, a cost that was inconsistent with what Senator Smith and I have been working on for 4 years, and runs entirely contrary to the interest of Bend taxpayers. So we are very hopeful that we can move this measure expeditiously, possibly if we have a markup in the next day or so. It continues to have

very strong bipartisan support, strong bipartisan support at home. And we are very hopeful that the subcommittee will look favorably on it.

I suspect this may be the last meeting of our subcommittee for the year. And I want to take this opportunity, Mr. Chairman, to say thank you for all of your assistance and cooperation. I think we are on the cusp of being able to have the Healthy Forest, the bipartisan initiative that we have worked on throughout this session going forward. And to a great extent, it is because you have been willing to meet me more than halfway. I am very appreciative of those efforts and hopeful that, like we had with the county payments legislation several years ago, we will have another breakthrough in a vital area of natural resources. And I thank you. I see Frank Gladdicks. There is Frank over there. I thank both of you for all of the cooperation that you have shown us throughout the session.

Senator CRAIG. Well, thank you for those generous words. I hope that the session ends with our Forest Health legislation becoming law. It is critical and necessary I think, not only for forest health but for the safety of our citizens. We have experienced some dramatic fire years.

With that, let me turn to my colleague, Jim Talent from Missouri to tell us more about the fouled up boundaries of the Mark Twain.

**STATEMENT OF HON. JAMES M. TALENT, U.S. SENATOR
FROM MISSOURI**

Senator TALENT. Not much more, Mr. Chairman. You have been kind enough to hold this hearing, and I am not going to penalize you by going through a long opening statement.

To make clear what has happened here, the government—the Corps of Engineers surveyed this land in 1970 and indicated it had certain boundaries for the National Forest. And local landowners, in reliance upon that, have bought and sold the property, have built fences on the property. And now a different government agency has come in and said, “No. You did not own the property after all,” and refuses to convey it to them except after a long administrative process and requiring them to pay twice for the same property.

In a private dispute, the party which was responsible for the incorrect survey in the first place would almost certainly be estopped from claiming that survey as a basis for now claiming the land, but since you cannot estop the Government we are in a position where if we do not act, these landowners are going to have to pay twice, plus all of the other problems that Senator Bond reported. So I hope that we will just sort of make an executive decision here that with regard to the small tracts of land, that we will go ahead and do justice for these individuals and let the agencies sort out responsibility for themselves afterward.

I do want to close by saying that Senator Bond has been working on this and really has done yeoman’s works and deserves a lot of credit for the attention he has paid to the concerns of these landowners and the, I think, the requirements of justice here.

And thank you, Mr. Chairman, for letting me make a comment.
Senator CRAIG. Well, thank you very much.

We have a fundamental problem today. It is called GPS. Now we can very accurately track boundary lines and after you have spent decades and decades with a deed and you have paid taxes on property you thought was yours and it has been cleared through numerous title companies over the years, and we go back and start realigning because we can now survey more accurately than ever before, I think that if—I would be a strong supporter of your legislation if it outlawed the Federal Government from using GPS'es to establish new boundary relationships.

[Laughter.]

Senator CRAIG. With that, let me invite our first panel of Tom Thompson, Deputy Chief, National Forest Service Systems, Department of Agriculture, and Jim Hughes, the Deputy Director, Bureau of Land Management, Department of the Interior, to come forward. And no, gentlemen, I do not expect you to address the GPS comment. But then again, it is not a bad idea.

[Laughter.]

Senator CRAIG. Please proceed, gentlemen. Tom, if you would start, we will go in that order to testify on all of the bills that you are here to testify on today.

STATEMENT OF TOM THOMPSON, DEPUTY CHIEF, NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. THOMPSON. Well, thank you, Mr. Chairman, and members of the subcommittee. I appreciate this opportunity to be before you today.

I would like to present the Department's view on H.R. 708, the Mendocino National Forest Land Exchange, S. 1167, to resolve boundary conflicts in Barry and Stone Counties, in the State of Missouri, and S. 1848, which is the Bend Pine Administrative Site, or the Nursery Site Act. The Department supports H.R. 708. We object to S. 1167 unless the bill is amended to address some concerns that we have in our testimony. And we would like to discuss a different alternative for S. 1848.

We start with H.R. 708, which authorizes the direct sale of two parcels comprising 120.9 acres of National Forest System land on the Mendocino National Forest in California to the Faraway Ranch. Various improvements and facilities have been constructed on these lands, and they have lost much of their National Forest character. This bill provides Faraway Ranch the opportunity to acquire these lands associated with their improvements and activities.

At the time of conveyance, Faraway Ranch will make full payment of the fair market value as determined by an appraisal that conforms to the Federal appraisal standards and is acceptable to the Secretary, as well as cover all direct costs associated with completing this transaction. The Department supports this bill because it will certainly improve management efficiency for the forest while recognizing the value of the public's assets. That concludes my comments on H.R. 708.

S. 1167, the Mark Twain National Forest Boundary Adjustment: S. 1167 would authorize the Secretary of Agriculture or the Secretary of the Army to resolve boundary conflicts with certain landowners in Barry and Stone Counties in Missouri, who have inno-

cently and in good faith relied upon land surveys which they believed to have been correct and have, as a result, occupied, improved or claimed portions of adjoining Federal land based on such surveys.

The basic facts in this situation are not in dispute. Surveyors under contract to the U.S. Army Corps of Engineers in the 1970's, who conducted a series of cadastral surveys in the area around the Table Rock Reservoir in Missouri, failed to properly locate and monument a number of the original Public Land Survey System corners. Subsequent private land surveys, who relied upon the incorrectly located corners, have confused landowners in Barry and Stone Counties regarding the location of what these private boundaries adjoining National Forest System lands were, and we believe Corps lands as well.

Unfortunately, this has led some of the affected adjoining landowners to believe they own certain parts of federally managed public lands.

The administration shares Senator Bond's concern that we need to find an equitable way to resolve the problems faced by these landowners. For the committee's information, I have attached to my testimony a January 22, 2003, letter from the Missouri State Land Surveyor to the Supervisor of the Mark Twain National Forest, describing the situation in Barry and Stone Counties and the efforts of the Forest Service and the Corps to correct the problems.

However, the Department objects to the approach to this problem that S. 1167 would provide. Our primary concern is that S. 1167 would transfer land, which is the property of all U.S. citizens, at no cost. But in addition, S. 1167 does not aid other landowners in the area with potential title claims and questionable boundaries with adjoining private landowners.

At this point, we believe that the Corps should take the necessary actions to correctly establish the Public Land Survey System corners, and the Forest Service and the Corps should work together to resolve tract-by-tract boundary conflicts in Barry and Stone Counties concurrently with the Corps' progress in correcting the original surveys.

In the case of boundary conflicts on National Forest Systems lands, those boundary disputes would be resolved under the Small Tracts Act. We would like to work with the Committee so that correct boundaries can be established for all potentially affected private landowners in Barry and Stone Counties, as well as for agencies of the Federal Government.

That concludes my comments on S. 1167.

S. 1848, the Bend Pine Nursery Administrative Site: S. 1848 would amend the Bend Pine Nursery Land Conveyance Act to require the Secretary to offer to sell 170 acres of the Bend Pine Nursery Administrative Site on the Deschutes National Forest to the Bend Metro Park and Recreation District in Deschutes, County, Oregon for \$3.5 million. Proceeds from this sale would be deposited in the fund established under the Sisk Act. These funds would then be available to the Forest Service for the acquisition, construction, or improvement of administrative and visitor facilities and associated land in connection with the Deschutes National Forest in the Bend community, and the acquisition of lands and interests in

lands in Oregon. The Forest Service has been working with the community of Bend, Oregon to implement Public Law 106-526.

S. 1848 would also direct the conveyance of 15 acres located in the northwest corner of this Administrative Site, for no consideration, to the Administrative School District, Number 1, Deschutes County, in accordance with section 202 of the Education Land Grant Act.

The Department believes that a better approach would be for the 170-acres to be reappraised for recreational purposes. We would point out that the severing of the 15-acre tract for conveyance under the Education Land Grant Act to the Bend-La Pine School District may cause unintended delay, because additional survey work and analysis would be needed beyond what has already occurred. In lieu of this two-conveyance process, we suggest a single conveyance of the 185-acre tract, which has already been surveyed, to the District, with the requirement that the District then convey the 15-acres as envisioned in the legislation.

This concludes my statement. And I would be pleased to answer any questions that you may have.

Senator CRAIG. Tom, thank you very much.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF TOM THOMPSON, DEPUTY CHIEF,
NATIONAL FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to appear before you today. I would like to present the Department's views on H.R. 708, the Mendocino National Forest Land Exchange, S. 1167, to resolve boundary conflicts in Barry and Stone Counties, in the State of Missouri, and S. 1848, the Bend Pine Nursery Administrative Site Act. The Department supports H.R. 708, objects to S. 1167 unless the bill is amended to address the concerns identified in my testimony, and would like to discuss a different alternative for S. 1848.

H.R. 708—THE MENDOCINO NATIONAL FOREST LAND EXCHANGE

H.R. 708 authorizes the direct sale of two parcels comprising 120.9 acres of National Forest System lands on the Mendocino National Forest in California to the Faraway Ranch. Various improvements and facilities have been constructed on these lands and they have lost much of their National Forest character. This bill provides Faraway Ranch the opportunity to acquire these lands associated with their improvements and activities.

At the time of conveyance, Faraway Ranch will make full payment of the fair market value as determined by an appraisal that conforms to the Federal appraisal standards and is acceptable to the Secretary, as well as cover all direct costs associated with completing this transaction. The Department supports this bill because it will improve management efficiency for the forest while recognizing the value of the public's assets.

S. 1167—THE MARK TWAIN NATIONAL FOREST BOUNDARY ADJUSTMENT

S. 1167 would authorize the Secretary of Agriculture or the Secretary of the Army to resolve boundary conflicts with certain landowners in Barry and Stone Counties, Missouri, who have innocently and in good faith relied on land surveys which they believed to have been correct and have, as a result, occupied, improved or claimed portions of adjoining Federal land based on such surveys.

S. 1167 would authorize the Secretaries to convey and quitclaim all right, title, and interest of the United States in land for which there is a boundary conflict; or to confirm Federal title to and retain in Federal management any land for which there is a boundary conflict where there are Federal interests, and to compensate the qualifying claimant for the value of the overlapping property for which title is confirmed and retained in Federal management, provided that a claim is filed within 15 years of the date of enactment of the Act. S. 1167 also authorizes the Secretaries to: (1) waive consideration for the value of the Federal land conveyed and quitclaimed upon a finding that the boundary conflict was the result of the innocent

detrimental reliance by the qualifying claimant; (2) pay administrative, personnel, and any other costs associated with the implementation of this Act, including the costs of survey, marking and monumental property lines and corners; and (3) reimburse the qualifying claimant for reasonable out-of-pocket survey costs necessary to establish a claim under this Act.

The basic facts do not appear to be in dispute. Surveyors under contract to the U.S. Army Corps of Engineers (Corps) in the 1970's, who conducted a series of cadastral surveys in the area around the Table Rock Reservoir in Missouri, failed to properly locate and monument a number of the original Public Land Survey System (PLSS) corners. Subsequent private land surveys, which relied on the incorrectly located corners, have confused landowners in Barry and Stone Counties regarding the location of private boundaries adjoining National Forest System lands, and we believe Corps lands as well. Unfortunately, this has led some of the affected adjoining landowners to believe they own certain parts of federally managed public land.

The Administration shares Senator Bond's concern that we need to find an equitable way to resolve the problems facing these landowners. For the Committee's information, I have attached to my testimony, a January 22, 2003, letter from Missouri State Land Surveyor to the Supervisor of the Mark Twain National Forest describing the situation in Barry and Stone Counties and the efforts of the Forest Service and the Corps to correct the problems.

S. 1167, while attempting to resolve the boundary and landownership issues with private adjoining landowners and the Federal government, does not aid other private landowners in the area with potential title claims and questionable boundaries with adjoining private landowners. The unresolved private title claims and questionable boundary locations between numerous private landowners relying on federal land surveys will encumber private land and title as long as the corners are not corrected.

We would like to work with the Subcommittee to address our concerns so that corrective land surveys are conducted and correct boundaries can be established for all potentially affected private land owners in Barry and Stone Counties, as well as for agencies of the Federal Government. However, the Department objects to the approach to this problem that S. 1167 would provide.

Our principal concern is that S. 1167 would transfer Federal land, which is the property of all U.S. citizens, at no cost. Since the passage in 1983 of the Small Tracts Act (P.L. 97-465, Stat. 2535; 16 U.S.C. 521c-521i)(STA), the Forest Service has had and has exercised the authority to resolve innocent encroachments on National Forest System lands based on erroneous land surveys or title opinions. With certain modifications addressing the specific situation in this case, we believe that the STA should be controlling here. Therefore, we urge the Committee to amend S. 1167 to provide that the affected landowners should apply to the Forest Service or the Corps, as appropriate, to resolve their claims.

In the case of boundary conflicts on National Forest Systems lands, under the STA, the Secretary has the authority to sell, exchange, or interchange by quitclaim deed parcels of forty acres or less which are interspersed with or adjacent to lands which are determined by the Secretary, because of location or size, not to be subject to efficient administration; or parcels of ten acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached, or would encroach upon such parcels, and who in good faith relied upon an erroneous survey, title, search, or other land description indicating that there was not such encroachment. The STA allows the Forest Service to collect all reasonable costs (appraisals, surveys, title research, etc.), as determined by the Secretary, from the claimant for completing the STA application, including the market value of the federal lands to be conveyed to the claimant. The Forest Service may waive the payment of all reasonable costs, except the market value of the federal lands to be conveyed, when there is private encroachment of federal lands in those cases in which the Secretary determines it would be in the public interest.

Finally, while the matter of which Federal agency erred may not be of particular concern to the affected landowners, we believe any corrective legislation should appropriately apportion responsibility for the problem. At this point, we believe that the Corps should take the necessary actions to correctly establish Public Land Survey System corners and the Forest Service and the Corps should work together to resolve tract-by-tract boundary conflicts in Barry and Stone counties concurrently with the Corps' progress in correcting the original surveys.

S. 1848—THE BEND PINE NURSERY ADMINISTRATIVE SITE

S. 1848 would amend the Bend Pine Nursery Land Conveyance Act (P.L. 106-526) to require the Secretary to offer to sell 170 acres of the Bend Pine Nursery Administrative Site, on the Deschutes National Forest to the Bend Metro Park and Recreation District in Deschutes, County, Oregon for \$3.5 million. Proceeds from this sale would be deposited in the fund established under Public Law 90-171 (16 U.S.C. 484a), commonly known as the Sisk Act. The funds would then be available to the Forest Service for the acquisition, construction, or improvement of administrative and visitor facilities and associated land in connection with the Deschutes National Forest in the Bend community, and the acquisition of lands and interests in lands in Oregon. The Forest Service has been working with the community of Bend, Oregon to implement P.L. 106-526.

S. 1848 would also direct the conveyance of 15 acres located in the northwest corner of the Bend Pine Nursery Administrative Site, for no consideration, to the Administrative School District, No. 1, Deschutes County, Oregon, in accordance with section 202 of the Education Land Grant Act (16 U.S.C. 479a).

The Department believes a better approach would be for the 170-acres to be appraised for recreational purposes. We would point out that the severing of the 15-acre tract for conveyance under the Education Land Grant Act to the Ben-La Pine School District may cause unintended delay, because additional survey work and analysis would be needed beyond what has already occurred. In lieu of this two-conveyance process, we suggest a single conveyance of the 185-acre tract, which has already been surveyed, to the District, with the requirement that the District then convey the 15-acre tract as envisioned in the legislation.

This concludes my statement. I would be pleased to answer any questions that you may have.

Senator CRAIG. Let us turn to Jim for his testimony and then we will question you all jointly. Thank you.

Jim.

**STATEMENT OF JIM HUGHES, DEPUTY DIRECTOR, BUREAU OF
LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR**

Mr. HUGHES. Thank you, Mr. Chairman. I thank the Committee for the opportunity to testify on S. 1209, to provide for the acquisition of land in Washington County, Utah, and S. 1467, the Rio Grande Outstanding Natural Area Act. The administration supports the purposes and goals of S. 1209 and S. 1467. While the administration supports acquisition of the lands identified in S. 1209, it does not support some of the specific provisions in this legislation. Regarding S. 1467, the administration could support the legislation with a number of modifications.

On the first bill, S. 1209, the Washington County, Utah Desert Tortoise Habitat Conservation Plan: The HCP was adopted in 1996 in order to protect important desert tortoise habitat, while also allowing continuing development in the fast growing St. George, Utah area. Since 1996, the BLM, as a Federal partner in the HCP, has coordinated the acquisition of 7,955 acres within the reserve from willing sellers. Among those willing sellers has been Environmental Land Technology, ELT. To date, the BLM has acquired a total of 527 acres of land from ELT.

Approximately 1,400 acres of private land remain to be acquired within the Red Cliffs Desert Reserve. Of those lands, 1,365 acres are controlled by ELT. The Interior Department Appropriations Act for fiscal year 2004 includes \$500,000 in LWCF funds for Washington County HCP acquisitions. While we will certainly move forward to complete an ELT acquisition using these funds, with lands most recently appraising at \$23,000 an acre, we would only be able

to acquire a very small portion of the remaining lands in the Reserve.

The BLM's most recent appraisal of the remaining ELT holdings was valued at approximately \$28 million when it was completed in 2001. The BLM's overall land acquisition project budget under the LWCF for fiscal year 2004, in contrast, was \$13.6 million, and those dollars are designated by Congress for a variety of other specific projects.

The BLM continues to look for other solutions to completing the acquisition of ELT's lands within the Red Cliffs Desert Reserve at an appraised value under the Uniformed Appraisal Standards for Federal Land Acquisitions. However, the bill does not exempt the BLM from following its existing land acquisition standards.

The Department supports acquisition of those remaining acres. And this legislation, as we understand it, would affect a Federal taking of private property and require payment of compensation, which is within congressional prerogative. However, the Department does not support the specific mechanisms provided in the bill to decide and pay ELT the compensation for these lands.

We would like the opportunity to work with the sponsor and the committee to improve this legislation to make it consistent with the BLM, Department of the Interior, and Department of Justice standards and to find the best and most direct way to resolve this matter.

Regarding S. 1467, north from the New Mexico border into Colorado is a 33-mile stretch of the Rio Grande River that is outstanding for many reasons. Through multiple land acquisitions from willing sellers, the BLM has acquired a continuous 20-mile stretch of lands along the western bank of the Rio Grande, now designated as the Rio Grande Corridor Area of Critical Environmental Concern.

The people who live in the San Luis Valley have come together in a collaborative fashion to find ways to further protect and enhance this stretch of this historic river.

S. 1467 establishes the Rio Grande Outstanding Natural Area along a 33.3 mile segment of the Rio Grande from the New Mexico border north to the Alamosa National Wildlife Refuge in a corridor about one-quarter mile wide on either side of the River. The overall area includes over 10,000 acres, approximately 35 percent of which is BLM-managed public land. The remainder is private land.

The bill establishes a commission whose purpose is to work with Federal, State and local authorities to develop an integrated resource management plan for the area. We support this type of collaborative effort. However, as currently drafted, we have concerns about the bill's use of a commission as a means of advising the Secretary on land management decisions affecting this area. We believe an advisory council is a more appropriate vehicle for this collaboration. Chartered under the Federal Advisory Committee Act (FACA), an advisory council would be able to fill many of the same roles as the proposed commission.

In addition, we would like to work on clarifications to this section to ensure that the BLM continues to have final responsibility for planning for the Federal lands. A single plan covering the entire

river corridor is still viable, provided it is clear that the BLM has ultimate planning authority for the Federal lands.

While the southern Colorado stretch of the Rio Grande is truly outstanding, we would recommend that the sponsors of the bill consider whether a different designation for this area might be preferred. We would be pleased to work with the sponsor and the committee to resolve this concern.

There are additional technical issues we would like to work on as well. They would include a map, clarification of the revocations in section 11(a) and improvement of the withdrawal in section 11(c).

Mr. Chairman, we believe the goals of this legislation are worthy, and we support them wholeheartedly. The local support for this proposal is just the kind of effort that this Department and this Administration encourages. We believe that by working together cooperatively, this area of the Rio Grande can be a model for responsible stewardship of the land.

Thank you for the opportunity to testify. I would be happy to answer any questions.

Senator CRAIG. Well, Jim, thank you very much.

[The prepared statement of Mr. Hughes follows:]

PREPARED STATEMENT OF JIM HUGHES, DEPUTY DIRECTOR,
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to testify on S. 1209, to provide for the acquisition of land in Washington County, Utah, and S. 1467, the Rio Grande Outstanding Natural Area Act. Both bills are currently being discussed by the Administration. The Administration supports the purposes and goals of S. 1209 and S. 1467. While the Administration supports acquisition of the lands identified in S. 1209, it does not support some of the specific provisions in this legislation. Regarding S. 1467, the Administration could support the legislation with a number of modifications.

S. 1209

The Washington County, Utah Desert Tortoise Habitat Conservation Plan (HCP) was adopted in 1996 in order to protect important desert tortoise habitat, while also allowing continued development in the fast growing St. George, Utah area. The establishment of the 62,000 acre Red Cliffs Desert Reserve was a critical element of the HCP. Since 1996, the BLM, as a Federal partner to the HCP, has coordinated the acquisition of 7,955 acres within the reserve from willing sellers through donation, exchange, purchase and conservation easements. Among those willing sellers has been Environmental Land Technology (ELT). To date, the BLM has acquired a total of 527 acres of land from ELT. Of that total, some 157 acres have been acquired through three separate land exchanges valued at approximately \$2.72 million, and the remaining 370 acres have been purchased through four different transactions using over \$6 million of Land and Water Conservation Fund (LWCF) monies appropriated by Congress.

Approximately 1,412 acres of private land remain to be acquired within the Red Cliffs Desert Reserve. Of those lands, 1,365 are controlled by ELT. The Department of the Interior and Related Agencies Appropriations Act of 2004 (Public Law 108-108) includes \$500,000 in LWCF funds for Washington County HCP acquisitions. While we will certainly move forward to complete an ELT acquisition using these funds, with lands most recently appraising at approximately \$23,000 an acre, we would only be able to acquire a very small portion of the remaining ELT acreage in the Reserve.

The BLM's most recent appraisal of the remaining ELT inholding was valued at approximately \$28 million when it was completed in 2001. The BLM's overall land acquisition project budget under the LWCF for FY2004 is \$13.6 million, and those dollars are designated by Congress for a variety of other specific projects.

The BLM continues to look for other solutions to completing the acquisition of ELT's lands within the Red Cliffs Desert Reserve. We are exploring the possibility of a competitive land sale under the Federal Land Transaction Facilitation Act of

2000 (Public Law 106-248), using the proceeds potentially to acquire the remaining ELT lands at appraised value. This would take over a year to complete.

S. 1209 is similar to a bill considered in the 107th Congress, H.R. 880. On May 10, 2001, the BLM testified before this subcommittee on H.R. 880 expressing views similar to those I will share with you today.

S. 1209 provides that, 30 days after the date of enactment, the United States would acquire the remaining ELT lands within the Reserve and 34 acres adjacent to the Reserve, and would make an initial payment of \$15 million within 60 days of enactment. The bill further provides that just compensation for the property would be reached either through a negotiated settlement between the property owner and the Secretary, plus interest from the date of enactment, or through a judgment obtained in a civil action brought by the Secretary in Federal Court. If a negotiated settlement cannot be reached, then compensation would be based on the valuation of the property determined by the court, plus interest from the date of enactment, reasonable costs and expenses of holding the property from February 1990 to the date of final payment, including possible damages, and reasonable costs and attorney's fees.

As stated before, the Department supports acquisition of these remaining acres within the Reserve. This legislation would affect a Federal taking of private property and require payment of compensation, which is within congressional prerogative. However, the Department does not support the specific mechanisms provided in the bill to decide and pay ELT the compensation for these lands.

As written, the \$15 million "initial payment" would likely come from existing programs because no other source is specified in the bill. Additionally, it is unclear whether the Department would avoid having to make this payment if a negotiated agreement is reached within two months from the date of enactment. It is also unclear what latitude the Secretary would have in "negotiating" a price outside litigation. The BLM is subject to the Uniform Appraisal Standards for Federal Land Acquisitions, which requires that land be purchased for the appraised value, not a higher "negotiated" amount. The bill does not exempt the BLM from following its existing land acquisition standards.

We believe the bill should include a mechanism that specifically directs the source of funds. The judgment fund may not be the most appropriate source of funds to pay for a directed taking. Moreover, the Department would be unable to complete a time-consuming exchange or acquisition of land subject to all existing laws, including the Federal Land Transaction Facilitation Act, within the mandatory timelines in the bill. The Committee should address these issues before the bill passes.

The Administration objects to those provisions of S. 1209 that deviate from standard land acquisition practices and substitute procedures that provide compensation beyond that received by other landowners in previous acquisitions in this area. However, the Administration supports the goal of acquiring this property for the Federal government, and would like the opportunity to work with the sponsor and the Committee to improve this legislation to make it consistent with BLM, Department of the Interior, and Department of Justice standards and to find the best and most direct way to resolve this matter.

S. 1467

From its headwaters in Colorado's San Juan Mountains, the Rio Grande flows south through Colorado, bisecting New Mexico, then crossing into Texas where it forms the U.S./Mexico border until emptying into the Gulf of Mexico. At 1,885 miles long, the Rio Grande is the fifth longest river in North America (and among the 20 longest in the world). Its flowing waters have been essential to survival for pre-historic, historic, and present day populations.

North from the New Mexico border into Colorado is a 33-mile stretch of the Rio Grande River that is outstanding for many reasons. Natural and undeveloped, this free flowing river is home to extensive wildlife. Significant for its recreational, scientific and educational uses, the area is dominated by sweeping views and a long history. Through multiple land acquisitions from willing sellers, the BLM has acquired a continuous 20-mile stretch of lands along the western bank of the Rio Grande now designated as the Rio Grande Corridor Area of Critical Environmental Concern.

The people who live in the San Luis Valley have come together in a collaborative fashion to find ways to further protect and enhance this stretch of this historic river. Discussions about protection of the corridor began following completion of the BLM's 1991 San Luis Resource Management Plan. As part of the plan, BLM conducted a wild and scenic rivers eligibility and suitability analysis and ultimately recommended that stakeholders interested in the river create "some enduring form of

protection.” The legislation being considered today is a result of that stakeholder process.

S. 1467, the Rio Grande Outstanding Natural Area Act, was introduced on July 28th of this year. The bill’s stated purpose is to conserve, restore, and protect this special resource. It does this by establishing the Rio Grande Outstanding Natural Area along a 33.3 mile segment of the Rio Grande from the New Mexico border north to the Alamosa National Wildlife Refuge in a corridor about 1 mile wide on either side of the river. The overall area includes over 10,000 acres, approximately 35% of which is BLM-managed public land. The remainder is private land.

The bill establishes a commission whose purpose is to work with Federal, State and local authorities to develop an integrated resource management plan for the area. We support this type of collaborative effort. The Secretary’s 4Cs envision just this type of endeavor. However, as currently drafted, we have concerns about the bill’s use of a commission as a means of advising the Secretary on land management decisions affecting this area. Specifically, the bill does not address the funding source for the commission, does not make clear the nature of the commission’s advisory role, or its impact on affected private property interests. Given these concerns, we believe an advisory council is a more appropriate vehicle for this collaboration. Chartered under the Federal Advisory Committee Act (FACA), an advisory council would be able to fill many of the same roles as the proposed commission. The BLM currently works with 39 advisory councils. They range from our 23 Resource Advisory Councils (RACs), which provide advice on multiple use management of public lands within a state or region of a state, to area-specific advisory councils, such as the Steens Mountain Advisory Council or the Canyons of the Ancients National Monument Advisory Committee in southwestern Colorado. All recommendations by advisory councils are considered by the BLM’s State/field offices and by the Washington office when making decisions about the management of public lands.

In addition, we would like to work on clarifications to this section to ensure that the BLM continues to have final responsibility for planning for the Federal lands. A single plan covering the entire river corridor is still viable, provided it is clear that the BLM has ultimate planning authority for the Federal lands. It is our understanding that the focus of this process would be restoration of the historic riparian community along the river. Specifically, issues of livestock movement through the largely unfenced river corridor, designation of vehicle access routes to minimize impact on riparian vegetation, and management of riparian habitat on BLM lands are likely to be addressed.

Undertaking a management plan is a time-consuming task requiring extensive resources and expertise. We believe the time deadlines and other specifics of the planning sections established in the bill may be overly optimistic. In order to ensure a fully cooperative, collaborative, and consultative process that is consistent with the National Environmental Protection Act (NEPA) and other laws and regulations, we would urge longer timeframes. We would be pleased to work with the sponsor and the Committee to address this concern.

While the southern Colorado stretch of the Rio Grande is truly outstanding, we would recommend that the sponsor of the bill consider whether a different designation for this area might be preferred. Currently, the BLM manages only one “Outstanding Natural Area” (ONA), the Yaquina Head ONA, located on the Oregon coast. Yaquina Head ONA is a tourist destination with an emphasis on visitation. Because visitation is not a stated goal in this area, we are concerned that using the same terminology could result in confusion. Possible alternatives would be a “cooperative management and protection area,” such as exists in eastern Oregon in the Steens Mountains, or “cooperative river management area.” We would be pleased to work with the sponsor and the Committee to resolve this concern.

There are additional technical issues we would like to work on as well. For example, we would like the opportunity to work with the sponsor and the Committee on an accurate map of the proposed area.

Additionally, Section 11(a) of the bill calls for the revocation of any existing reservations on the public lands within the area. There are two such reservations. The first is a 1949 administrative withdrawal of approximately 2,700 acres for the purpose of future hydroelectric development (this withdrawal covers lands both in southern Colorado and northern New Mexico.) The second is a 1939 Executive Order creating public water reserves for the purpose of livestock and domestic access. These reservations are no longer necessary, because in the former case, hydroelectric development has been rejected as a viable option for this section of the river and in the later case because access to the Rio Grande now exists due to subsequent BLM land acquisitions. As written, the language only revokes the portion of the reservation within the 1/4-mile river corridor, and could result in unnecessary manage-

ment confusion. As all of these reservations are river-based, we advocate a complete revocation of the reservations in lieu of a partial revocation.

Section 11(c) of the bill withdraws the public lands within the newly designated area from a host of public laws and provisions. To avoid confusion, we would recommend a standard withdrawal from location, entry, appropriation and/or patent under the public land laws and mining laws as well as from operations of the mineral leasing, mineral materials, and geothermal leasing laws. Such a standard withdrawal will foster clear understanding and, we believe, reflects the intent of the sponsor.

The Administration supports sections 9(c), 13, and 14 regarding water rights. This language makes clear that the designations in this Act shall not be construed to constitute an express or implied water right.

Mr. Chairman, we believe the goals of this legislation are worthy and we support them wholeheartedly. The local support for this proposal is just the kind of effort that this Department and this Administration encourages. We believe that by working together cooperatively, this area of the Rio Grande can be a model for responsible stewardship of the land.

Thank you for the opportunity to testify, I would be happy to answer any questions.

Senator CRAIG. Tom, thank you for your testimony. We will run through a round of questions here to see if can get this wrapped up as quickly as possible.

Tom, on S. 1167 as it relates to the boundary conflicts on the Mark Twain, the approach you are proposing sounds labor intensive and time consuming. Is there not a more expedient process that gets these surveys corrected and private land titles resolved?

Mr. THOMPSON. Mr. Chairman, the approach that we are suggesting is to do two things. One is to deal on a case-by-case basis with these differences that exist, that have been brought about because of an erroneous location of boundaries. The original corners were set in the 1840's. The surveys that were done in the 1970's erroneously located those. The original corners are where they are.

And what we are saying is, number one, let us find the original ones and correct the boundaries so that we do not perpetuate this problem for years and years and years to come. At the same time, we are suggesting that we deal with these cases. And for us with the Forest Service, we would use the Small Tracts Act to take care of these disputes.

It is a two-pronged thing. One is to solve the long-term problem of having bad surveys. And the other one is to deal with the differences that exist and use whatever authorities we can to make the appropriate transfers that need to be made.

Senator CRAIG. Well, you all know a great deal more about it than I, as do my colleagues from Missouri. I hope we can count on the Forest Service working with this committee over the next month or so, so that we can resolve this and move this legislation out to get a solution to it.

Mr. THOMPSON. We look forward to doing that. We really do.

Senator CRAIG. It is awfully difficult to say to somebody who thought they bought their land in good faith, that, "You are going to have to re-buy it again," especially if you have owned it for 25 or 30 years and you have paid taxes on it.

Mr. THOMPSON. Yes.

Senator CRAIG. And that is a conflict that is, you know, speaking loudly to a resolution.

On S. 1848, the Bend Pine Nursery, this legislation seems straightforward, a straightforward solution to a problem in Oregon. And the Forest Service cannot support the bill as it is?

Mr. THOMPSON. Well, it is our belief that we have an opportunity through a new survey, which is not to look at the value in the best and highest use, but to do the appraisal based upon recreational use which is what its use would be under this sale. And so it is just to get a focused appraisal based upon the use that it is going to be. That is not the way the appraisal was done. And it is a matter of going back, taking 6 months to do that, and——

Senator CRAIG. How much would a new appraisal cost?

Mr. THOMPSON. Oh, I am not sure. I think it——

Senator CRAIG. You suggested 6 months, so we understand where the time is. How about the money?

Mr. THOMPSON. I am not sure exactly what the amount for the new survey would be. I think it is somewhere around \$500,000.

Senator CRAIG. And how many acres are we talking about?

Mr. THOMPSON. 185 acres total, but 15 of that would be conveyed under the ELGA provisions.

Senator CRAIG. And what is that land worth per acre?

Mr. THOMPSON. I am sorry?

Senator CRAIG. And what is that land worth per acre?

Mr. THOMPSON. The——

Senator CRAIG. I know Bend.

Mr. THOMPSON. Yes. The appraisal that we completed over the last year came in at \$5.8 million.

Senator CRAIG. I see.

Mr. THOMPSON. And so that is what—but that is under a different assumption.

Senator CRAIG. The Forest Service has a half a million dollar in their budget to complete the survey?

Mr. THOMPSON. We feel that this is an important resolution that we want to have, an equitable and an expeditious way of resolving this and we want to be fair.

Senator CRAIG. Yes.

Mr. THOMPSON. And we want to make sure that we have the right information and data to support it.

Senator CRAIG. Okay.

Mr. THOMPSON. It is an alternative.

Senator CRAIG. Sure.

Mr. THOMPSON. And we certainly believe that it is one approach.

Senator CRAIG. Thank you.

On H.R. 708, Mendocino National Forest Conveyance, this legislation calls for the proceeds to be used for acquisition of non-Federal lands adjacent to the Forest Service which seems to be a common approach for revenue generated from the sale of Federal lands. Would the Forest Service support this language that provides authority to use these funds for forest health such as fuel reduction?

Mr. THOMPSON. I do not think we would oppose that.

Senator CRAIG. Yes. Okay. Well, Jim, I will get to you on the next round. Let me turn to my colleague who may be asking all of the right questions at the time specifically to the BLM issues. So let me turn to him.

Senator CAMPBELL. Thank you, Mr. Chairman.

Senator CRAIG. Senator Campbell.

Senator CAMPBELL. Jim, as I understand your testimony as I read it and listened to you, you used the word "outstanding."

Mr. HUGHES. Yes.

Senator CAMPBELL. That is what we put in the title, as you know. I guess it can be outstanding if we do not call it outstanding, is that correct?

[Laughter.]

Mr. HUGHES. I do not want to mislead you, Senator. I think one of the issues we have—it is our understanding that the people—you know, many times a community or a group will come together and they want to designate a monument or a park and, quite frankly, one of the reasons is they want tourism and they want to attract people there.

Senator CAMPBELL. Sure.

Mr. HUGHES. It is our understanding that that may not be the case in this area. And we just raised that issue, so—

Senator CAMPBELL. Well, in the BLM, is it like the Park Service in that they have certain specified, I do not know, attributes or topography or so on for different kinds of names? That is the difference between "national monument" and "national park" as an example. Does the BLM have that same kind of a stratified system when you use a certain name?

Mr. HUGHES. Yes, that is correct. And again, I do not—we do not have great opposition. We just raise that as an issue to the community.

Senator CAMPBELL. Well, reading it and hearing you, the changes you recommended do not seem unreasonable to me, but I would like to withhold judgment until we hear from the Colorado witnesses.

Have you been out there, by any chance, been to that valley? They say it is the largest valley in the United States at that elevation.

Mr. HUGHES. No. I have heard a lot about it though, Senator.

[Laughter.]

Senator CAMPBELL. Well, it is a great place. I go through every few weeks myself, and you would not believe that one of the nicknames is "A Land of Cool Sunshine," because it can be sunny and just brilliant and 20 below at the same time. And yet there is an alligator farm out there. And I never would have believed alligators could be raised at 20 below if I had not gone to visit it one time.

[Laughter.]

Mr. HUGHES. They wear coats.

[Laughter.]

Senator CAMPBELL. Of course, the water they are in is not that cold either, but—

[Laughter.]

Senator CAMPBELL. I thought I would point that out. If you get there, there are some terrific things to see.

Mr. HUGHES. Thank you, Senator.

Senator CAMPBELL. Well, I have no further questions. But I would ask you if you would be willing to work with staff if we can

work out, you know, some of the nomenclatures and the different small things.

Mr. HUGHES. Oh, yes. And with the people out there, we would be happy to work with them also.

Senator CAMPBELL. Thank you.

Mr. HUGHES. Thank you.

Senator CAMPBELL. Thank you, Mr. Chairman.

Senator CRAIG. Thank you.

Now, let me turn to my colleague, Senator Talent.

Senator TALENT. Thank you, Mr. Chairman.

Tom, we would all like to get this resolved. And I appreciate the good faith in which you are acting. The concerns that you raise, it seems to me, that are or may be legitimate from 40,000 feet if you are the government, but really are not when you apply it to these landowners.

One of them is that we should not convey property without cost, but these people have paid. What we really are doing is asking them to pay twice, would we not be? Because, as the chairman said, they have paid for the land and they have paid taxes all of this time. They just paid the wrong person, is their claim, but that is not their fault. So I mean, it is not without cost to them. I mean, is that not fair?

Mr. THOMPSON. Well, the issue would be if they were acquiring additional land. I mean, obviously, we want to get the boundaries——

Senator TALENT. Clarified.

Mr. THOMPSON. Yes. I mean, it is the assumption that lands that they have improvements on, that, you know, from a legal standpoint, really is not theirs if you will not go back, but the idea of giving them that land that they have improvements on, transferring that to them, and having an equitable return, compensation to the citizens of the country, so——

Senator TALENT. Well, the point is that they have paid in reliance, good faith reliance on the Government survey which the Act requires, that they have acted in reliance and in good faith and innocently. They have paid for the property, and they have also paid the taxes.

So if we say to them, "Now, you cannot have your property unless you pay again," effectively they will have to pay twice. That is the point I am making.

So this would be a basis, it seems to me, for you all making an exception to what I understand is an important administrative policy for you. You do not want to be transferring land without getting some payment, but in this case you could say, "Well, you know, we can make an exception because there was payment to somebody for this."

The point I wanted to make is, Mr. Chairman, as Tom mentioned, case-by-case claims, well, the Act would require that. They would have to file a claim and they would have to prove under procedures set forth that they had innocently and in good faith relied on the Federal survey and occupied and improved the claimed land. So it is not like we are just going to sweepingly, in the Act, give this property. They are going to have to go through an administrative process. It just expedites things. And I guess what I—it is not

really a question so much as a comment. It does deal with the concern about a case-by-case adjudication of it.

Another thing is, Mr. Chairman—and maybe you could comment on this—we would all like to resolve all of the disputes at once, including disputes between private landowners. But that will have to be resolved according to State law, will it not?

Mr. THOMPSON. Well, obviously, if we can get the survey corrected those will be much easier to resolve in the long-term. And I think all parties agree that that would be the——

Senator TALENT. That we want to get this resolved.

Mr. THOMPSON [continuing]. Best thing to do.

Senator TALENT. Yes, we want——

Mr. THOMPSON. We want to get the survey——

Senator TALENT. We want to get the survey correct.

Mr. THOMPSON. Yes.

Senator TALENT. And I think we have to do that before we resolve these claims.

But the point I am making, Mr. Chairman, is that if we wait to do anything for these people who have—against whom the Federal Government is claiming something, until all of the private disputes are finished, we are going to have to wait for the whole State law process to work itself out, because this is a case where the State courts are going to have to determine what the impact of this improper Federal survey is on State law, you know, because that is a Missouri question, unless we want to try in this legislation to take that from them which Senator Bond and I certainly do not want to do.

So I guess what I am saying is: Let us resolve the piece of it we can resolve. I think it is without prejudice to the good policy that we do not transfer Federal property without payment, because they have paid. And I appreciate the chance to ask some questions, Mr. Chairman.

Senator CRAIG. Sure.

Senator TALENT. And I do appreciate that you all have been working with Senator Bond's office in particular. And I know that you are just trying to stand up for the interests of the people in this land. I think we can resolve it, and I think the bill really does.

Thank you, Mr. Chairman.

Senator CRAIG. Senator Talent, thank you very much.

Jim, let me come back to you for a final question on S. 1209, the Washington County, Utah land acquisition. In your testimony, you mentioned that the BLM had already coordinated the acquisition of some 4,400 acres of land within the Red Cliffs Desert tortoise reserve. How important is the 1,550 acres currently held by ELT to the effectiveness of the reserve?

Mr. HUGHES. I am not a biologist, from that standpoint, but according to what I have seen in terms of the map, et cetera, there is a highway very close to this property. And I think from that standpoint, it would represent sort of a corridor to the highway. So I think it is an important portion for both keeping people out of there and for protecting the tortoise.

And I would point out the habitat conservation plan has been very successful up to this point. I think it has the largest popu-

lation of desert tortoise in the West right now in a confined area. So it seems to be, at least in that location, working.

Senator CRAIG. Well, a highway——

Mr. HUGHES. Right.

[Laughter.]

Senator CRAIG. A highway would be pretty critical to a tortoise.

Mr. HUGHES. Right, right. That is what I thought, too.

[Laughter.]

Senator CRAIG. Cars tend to move a lot faster than tortoises do.

Mr. HUGHES. Right. That is what I thought.

[Laughter.]

Senator CRAIG. All right. In your testimony, it is clear that BLM is eager to find a way to complete acquisition of this critical tortoise habitat. How would this legislation need to be changed to accommodate BLM's major concerns?

Mr. HUGHES. I think there are probably several things. I think, first of all, the method of payment that is proscribed in here, the legal taking that is authorized. I think there are serious questions about those that we would have to work out with the Justice Department. The question really is: How do we compensate? I think the Department feels strongly that we have an obligation to acquire this property, you know, because that is what we agreed to when the Department in 1996 entered into this habitat conservation plan.

Senator CRAIG. Yes.

Mr. HUGHES. So it will take, I think, some degree of staff work at the administration level and then working with staff up here to resolve it.

Senator CRAIG. Well, we will work with you to resolve that issue before this legislation moves, and hope we can do that.

Gentlemen, thank you very much for your time and your involvement with these issues and this legislation.

Mr. HUGHES. Thank you.

Mr. THOMPSON. Thank you.

Senator CRAIG. I will now turn to my colleague from Colorado, Senator Ben Nighthorse Campbell, to introduce our guest and witness from his State.

Ben.

Senator CAMPBELL. Yes. Mr. Chairman, I think we only have two witnesses. There are, in fact, none for the other bills other than S. 1467.

Senator CRAIG. That is right.

Senator CAMPBELL. I would like to introduce Mrs. Charlotte Bobicki who is the Alamosa County Commissioner, and Ms. Kate Booth Doyle, San Luis Valley Ecosystem Council, both towns in the Big Valley.

If you ladies would, just go ahead in the order I introduced you. Welcome to Washington.

Ms. BOBICKI. Thank you.

Senator CRAIG. Thank you, Ben.

Please proceed.

**STATEMENT OF CHARLOTTE BOBICKI,
COUNTY COMMISSIONER, ALAMOSA COUNTY, CO**

Ms. BOBICKI. Thank you, Mr. Chairman and members of the committee. I am Charlotte Bobicki, a county commissioner from Alamosa County, Colorado. Alamosa County is located in the San Luis Valley, a high mountain valley in south central Colorado which is drained by the Rio Grande.

The Rio Grande and its tributaries rise in the San Juan Mountains and are fed almost exclusively by snow melt. From the mountains, the Rio Grande flows into the San Luis Valley, across the Valley floor, and then south into New Mexico. The San Luis Valley has an average elevation of more than 7,000 feet above sea level and is about 100 miles north to south and 75 miles east to west. Portions of the Valley floor receive an average of only 7 inches of precipitation per year, while the surrounding mountains receive precipitation principally in the form of snow that averages more than 30 inches of moisture annually.

More than 70 percent of the annual flow of the Rio Grande and its tributary streams occurs in a 3- to 4-month period, from early May to the end of July. There is a map at the back of our testimony that shows the precipitation distribution in our area.

There are approximately 600,000 acres of irrigated farmland in the San Luis Valley which depend upon the waters of the Rio Grande and its tributaries for irrigation supplies. The great majority of the irrigation systems were privately constructed more than 100 years ago and remain privately operated today. The San Luis Valley grows some of the finest potatoes in the United States as well as small grains, alfalfa and grass hay, and vegetables such as lettuce and carrots.

Along the Rio Grande, near the city of Alamosa in the center of the Valley is the Alamosa National Wildlife Refuge. There is another map at the back of our testimony which shows the location of the San Luis Valley in Colorado, as well as a smaller scale map showing the location of the proposed Outstanding Natural Area. And I need to mention that there is a correction on two of the maps in the back showing this location.

The water of the Rio Grande and its tributaries is the subject of an Interstate Compact between the States of Colorado, New Mexico and Texas that was signed in 1938. The Compact apportions the waters of the Rio Grande using an inflow/outflow technique under which the native flows of the River that are coming out of the mountains are measured, and Colorado's obligation to make deliveries to New Mexico are calculated as a percentage of that inflow.

Every year, there are deliveries to New Mexico as required by the Compact, although the quantities vary significantly from years of severe drought to years with extremely high water conditions. As the result of the Compact-required deliveries, there is always water flowing in the Rio Grande south of Alamosa.

In the southern part of the San Luis Valley, the Rio Grande flows across the broad, relatively treeless valley floor, where the vegetation consists primarily of sage and other sparse, drought-resistant plants. Only along the River are there significant amounts of willow and cottonwood. More than half of the land bordering the

River is in private ownership, with the rest being controlled by the Bureau of Land Management.

In many places, the riparian zone along the River is degraded because of past land use practices, on both private property and BLM lands. For a number of years, Federal, State and local officials have looked for a way to restore and protect the riparian zone of the River without creating a management structure that would conflict with the long-standing water uses upstream in the San Luis Valley. Our agricultural economy is more than a century old and it is very important to maintain our ability to continue to use water for the benefit of our residents and those who use our agricultural products.

We believe a Federal designation of an Outstanding Natural Area along the Rio Grande as proposed by Senator Campbell, will permit the cooperative restoration and protection of the River corridor by both the private and public landowners. The Outstanding Natural Area Legislation before you today provides for the creation of a commission made up of Federal, State and local stakeholders whose charge is to develop a management plan for submission to the Secretary of the Interior that establishes the procedures that will be used to restore and protect the Area. Participation by private landowners in the plan is encouraged, but it is entirely voluntary.

Because of the Compact delivery requirements, this bill would recognize that no implied or Federal reserved water rights would be required for the Area, thereby eliminating potential conflicts between the Federal land management agency and the upstream private water right holders.

The Board of County Commissioners of all of the counties in the San Luis Valley have voted unanimously to support the Outstanding Natural Area legislation. We believe the ability to create cooperative, win-win solutions such as this are few and far between, but in this instance there is a willingness on the part of local government, State government, citizen groups, affected landowners as well as local Federal agency representatives to work together for the benefit of the Valley and its environment. We are in agreement that the Outstanding Natural Area proposed by this bill is in all of our interests. All we need now is your support.

On behalf of the county commissioners of the counties of the San Luis Valley, Costilla, Conejos, Alamosa, Rio Grande, Sagauche and Mineral, we ask that you favorably consider Senator Campbell's S. 1467 and give us the opportunity to restore and protect the riparian zone of the Rio Grande in a way that does not create conflicts between the interests of Federal agencies and the interests of the citizens of our community.

Thank you very much for the opportunity to appear before you today.

Senator CRAIG. Madam Commissioner, thank you very much for that testimony.

[The prepared statement of Ms. Bobicki follows:]

PREPARED STATEMENT OF CHARLOTTE BOBICKI, COUNTY COMMISSIONER,
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In the southern part of the San Luis Valley, the Rio Grande flows across the broad, relatively treeless valley floor, where the vegetation consists primarily of sage and other sparse, drought resistant plants. Only along the River are there significant amounts of willow and cottonwood. More than half of the land bordering the River is in private ownership, with the rest being controlled by the Bureau of Land Management. In many places, the riparian zone along the River is degraded because of past land use practices, on both private property and BLM lands.

For a number of years, federal, state and local officials have looked for a way to restore and protect the riparian zone of the River without creating a management structure that would conflict with the long-standing water uses upstream in the San Luis Valley. Our agricultural economy is more than a century old and it is very important to maintain our ability to continue to use water for the benefit of our residents and those who use our agricultural products.

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*The accompanying maps have been retained in subcommittee files.

On behalf of the County Commissioners of the counties in the San Luis Valley: Costilla, Conejos, Alamosa, Rio Grande, Sagauche and Mineral, we ask that you favorably consider Senator Campbell's S. 1467 and give us the opportunity to restore and protect the riparian zone of the Rio Grande in a way that does not create conflicts between the interests of federal agencies and the interests of the citizens of our community. Thank you very much for the opportunity to appear before you today.

Senator CRAIG. Before we ask questions of you, let me turn to Ms. Kate Booth Doyle of the San Luis Valley Ecosystem Council. Please proceed.

Ms. BOOTH DOYLE. Thank you.

**STATEMENT OF KATE BOOTH DOYLE, SAN LUIS VALLEY
ECOSYSTEM COUNCIL, COLORADO**

Ms. BOOTH DOYLE. Thank you for the opportunity to speak. And thank you, Senator Campbell, for introducing the bill. I appreciate that.

Mr. Chairman and members of the committee, my name is Kate Booth Doyle. I am a member of the San Luis Valley Ecosystem Council, and have been actively involved in the development of the Outstanding Natural Area Legislation for many years. I am also a landowner along the Rio Grande in the area to be encompassed by the Outstanding Natural Area.

I wish to first explain that the San Luis Valley Ecosystem Council is an umbrella group of citizens concerned about the environment and is active in other nationally recognized groups such as the Sierra Club, the Wilderness Society, the National Wildlife Federation, Ducks Unlimited and Trout Unlimited. We work together under the banner of the Ecosystem Council on issues of specific concern to our beloved San Luis Valley.

All of the citizens of the Valley are very proud of their ability to work together on issues of common concern. Although you may find it surprising, the members of the environmental community, the members of agricultural community, the business men and women and the residents of the cities and towns and their elected officials have been able to work out cooperative win-win solutions to many problems they have faced over the years.

We consider the Federal land managers from the Bureau of Land Management, the Forest Service and the Fish and Wildlife Service to be our allies and friends, not our enemies, and we have attempted to establish a model where compromise among all of the interest groups is always the goal.

Senator Campbell's Rio Grande Outstanding Natural Area Legislation before you today is just such an effort. It is the result of a significant amount of consultation and cooperation. It is supported not simply by the environmental community in the San Luis Valley, but also by the irrigation districts, the mutual ditch companies, the conservancy and conservation districts, the Cattlemen's Association, and many landowners along the affected reach of the River. In addition, we have enjoyed the cooperation of local Federal officials, both from the Bureau of Land Management and the Fish and Wildlife Service. We all hope you will give us your support in this very positive and proactive effort.

There is another reason that S. 1467 is an important initiative. After discussions had started about the opportunities to create an

Outstanding Natural Area to better manage the River's riparian zone, we were informed that an endangered species, the Southwest Willow Flycatcher was believed to exist in the San Luis Valley. As a result, we promptly began the process of developing a habitat conservation plan to protect that species and the Outstanding Natural Area will be an important part of that Plan by giving us another reason to work together to restore the willow stands along the riparian fringe of the River. These willows are the primary habitat of the Southwest Willow Flycatcher.

Our local community wishes to continue its successful practice of working together to take a proactive approach in solving environmental problems. In this case, the identified problem is the need to protect and restore the riparian zone of the Rio Grande between the Alamosa National Wildlife Refuge and the State line.

The Outstanding Natural Area approach will provide significant private landowner input into the development of the management plan and will allow the Federal land and private land to be managed cooperatively.

I want to emphasize that there is nothing in the legislation that can compel an unwilling landowner to participate. However, we believe that there will be overwhelming interest in participating in the plan as landowners begin to strive to meet their responsibilities to be good stewards.

I should be clear that there are some who would prefer to see the Rio Grande designated as a Wild and Scenic River. However, the environmental community in the Valley recognizes that to do so would create the potential of a Federal reserve water right with all of the inherent conflicts and controversies with private water users. We do support the acquisition of a minimum stream flow by the State of Colorado under Colorado law, as the legislation recognizes.

The beauty of this legislation is that it provides an opportunity to improve and restore the River, while at the same time avoiding those very conflicts over water rights between private water users and Federal agencies. As Charlotte explained, the Rio Grande Compact mandates that water be delivered through this area every year.

We request that you give favorable consideration to S. 1467, and I thank you most sincerely for the opportunity to appear before you today.

[The prepared Statement of Ms. Booth Doyle follows:]

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ECOSYSTEM COUNCIL, COLORADO

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There is another reason that S. 1467 is an important initiative. After discussions had started about the opportunities to create an Outstanding Natural Area to better manage the river's riparian zone, we were informed that an endangered species, the Southwest Willow Flycatcher was believed to exist in the San Luis Valley. As a result we promptly began the process of developing a Habitat Conservation Plan to protect that species and the Outstanding Natural Area will be an important part of that Plan by giving us another reason to work together to restore the willow stands along the riparian fringe of the River. These willows are the primary habitat of the Southwest Willow Flycatcher.

Our local community wishes to continue its successful practice of working together to take a proactive approach in solving environmental problems. In this case, the identified problem is the need to protect and restore the riparian zone of the Rio Grande between the Alamosa National Wildlife Refuge and the state line. The Outstanding Natural Area approach will provide significant private landowner input into the development of the management plan and will allow the federal land and private land to be managed cooperatively.

I want to emphasize that there is nothing in the Legislation that can compel an unwilling landowner to participate. However, we believe that there will be overwhelming interest in participating in the plan as landowners begin to strive to meet their responsibilities to be good stewards.

I should be clear that there are some who would prefer to see the Rio Grande designated as a Wild and Scenic River however, the environmental community in the Valley recognizes that to do so would create the potential of a federal reserve water right with all of the inherent conflicts and controversies with private water users. We do support the acquisition of a minimum stream flow by the State of Colorado under Colorado law, as the legislation recognizes. The beauty of this legislation is that it provides an opportunity to improve and restore the River, while at the same time avoiding those very conflicts over water rights between private water users and federal agencies. As Charlotte explained, the Rio Grande Compact mandates that water be delivered through this area every year. We request that you give favorable consideration to S. 1467 and I thank you most sincerely for the opportunity to appear before you.

Senator CRAIG. Ms. Booth Doyle, thank you very much for that testimony.

Commissioner, both you and Ms. Booth Doyle have spoken to the broad base of support that this legislation has. Who is opposed to it?

Ms. BOBICKI. To my knowledge, I do not—there is no one because the private landowners are voluntarily taking part in this, and the BLM is wanting to work with this. So I think it is something that is a win-win-win situation.

Senator CRAIG. And how does this encumber, or could it encumber private land ownership?

Ms. BOBICKI. It is strictly voluntary, so there should be no takings, and there should be no conflict at all with the private landowners because it is voluntary.

Senator CRAIG. Section 10(d) prohibits permitting or approving any new impoundments within the designated area. Would this in-

clude stock ponds for grazing allotments or such management tools as might be needed for grazing?

Ms. BOOTH DOYLE. Yes, sir. There has been some discussion regarding the management plan that would allow for the cattle to be able to get to water with—I forget what they call the little watering avenues that cattle go through. Mr. Campbell, I am sure you know it.

Senator CAMPBELL. A ditch.

[Laughter.]

Ms. BOOTH DOYLE. No, sir, not a ditch. No, sir, not a ditch.

[Laughter.]

Ms. BOOTH DOYLE. But basically allowing access where possible for cattle grazing. And at the present time, there is no cattle grazing on the private portion of the land involved. And BLM has a very minimal grazing on the BLM section because they are in the process of some restoration within the BLM.

Senator CRAIG. Ms. Doyle, in your testimony you speak to an amazing collaborative effort and a broad-based group of stakeholders. If this is true, and in most instances where these kinds of things meet little opposition and I have found that to be the case, maybe we could export your approach to other areas of the West where considerable conflict still rages over new designations for land use or land management.

Ms. BOOTH DOYLE. Thank you.

Senator CRAIG. But I congratulate both of you on that kind of effort. I think that when we do reach out to all groups involved, and allow them to have an effective say in the shaping of this kind of an approach, then we work well together.

The only problem that you might have with Senator Campbell and I teaming up together to do something is that we did that in the late 1980's on an issue that is still in question.

[Laughter.]

Senator CRAIG. I will not mention its name. It is still in conflict out in that great State of yours. We were able to pass the legislation, but never to resolve the issue. It just shows how powerful members of the Congress are. We passed it, Ben reminds me, twice into law, and yet I do not think any dirt has been moved. Has it?

Senator CAMPBELL. Oh, yes, they are now.

Senator CRAIG. Oh, they are now. Okay.

Senator CAMPBELL. Yes.

Senator CRAIG. All right.

Senator CAMPBELL. The Senator is speaking about the Animas La Plata project over by Durango that we worked on together for 15 years.

Senator CRAIG. Yes.

Ms. BOOTH DOYLE. Oh, wow.

Senator CAMPBELL. Yes.

Senator CRAIG. Let me turn to my colleague for any questions he might have.

Senator CAMPBELL. Thank you, Mr. Chairman. I am sure you would agree that it would be nice if most of the bills dealing with the public lands that you have introduced or that I have introduced could be this nice. But it certainly says something to the local peo-

ple's ability to work together, because they really brought it to the table pretty much done.

While you were testifying, Charlotte and Kate, I was looking at your map and I was showing the chairman your map and pointing out to him some of the very, very famous places that we are proud of out there, such as——

Senator CRAIG. We were still listening——

Senator CAMPBELL [continuing]. Where Manassas is, commissioner, but I was giving this moving geographic analysis.

Senator CRAIG. We do a few different things at the same time.

Senator CAMPBELL. That is right. We have to.

[Laughter.]

Senator CAMPBELL. I showed him where Manassas was, where the home of Jack Dempsey was. And he is certainly an aficionado of the West as I am, and I had to show him where Wolf Creek Pass was because he was reminiscing on the C.W. McCall song "Wolf Creek Pass," although I still cannot figure out how C.W. McCall got that tunnel on the wrong side of the pass if you listen to the words of that song.

[Laughter.]

Senator CAMPBELL. And Creede, where Bat Masterson was reportedly once the sheriff and where the killer of Jesse James, in turn, was killed. So there are some very, very famous places within this boundary of the Big Valley.

And I would hope that someday if you have the chance, you could visit it.

Senator CRAIG. Not in the wintertime.

Senator CAMPBELL. No, not in the winter.

[Laughter.]

Senator CRAIG. It tends to get a bit chilly up there.

Ms. BOBICKI. It is just cool sunshine. It is not cold.

[Laughter.]

Senator CRAIG. Just cool, just cool, all right.

Senator CAMPBELL. Coming from Idaho, you know what 20 below is like.

Senator CRAIG. Oh, yes.

[Laughter.]

Senator CAMPBELL. All right. Let me just ask a couple of questions. You heard the BLM testify. What was the local community's intent on calling it a "commission" rather than something else like an advisory council, as the BLM has recommended?

Ms. BOBICKI. I think that the word "commission" implies maybe a bigger commitment and stronger responsibility for their duties. It is just the implication of the word "commission."

Senator CAMPBELL. Yes. As I understand it from the BLM, "commission" somehow implies that they would have the decision-making that could complicate things for the BLM. So would that—they did say that that was not a big issue, but it is an issue. And so how locked in are you that you call it a "commission"? If there is some other word that is agreeable to the BLM and you, would you be willing to deal with that?

Ms. BOBICKI. Oh, yes.

Senator CAMPBELL. Okay.

Ms. BOOTH DOYLE. If I may say a word about that also, Mr. Campbell, that in the past, already in this particular portion, the corridor, the Rio Grande Advisory Council was put together to garner support for protection of this area with the BLM and private land owners. So I do not think that there would be an objection—

Senator CAMPBELL. So there already is an advisory council that helped work on this.

Ms. BOOTH DOYLE. Yes, sir. It is dormant right now, but this has already been in place.

Senator CAMPBELL. And another question they had was calling it the "Outstanding Natural Area," and you heard me ask him about how they define different topographical areas to designate, park, monument and so on. Would that be a major issue, if that was called—I do not know—Rio Grande Natural Area or something else, something-else kind of area?

Ms. BOBICKI. No, sir. That is not—

Senator CAMPBELL. Okay.

Ms. BOBICKI. What it is called would not be an issue.

Senator CAMPBELL. Okay. Well, great. Well, then we will look forward to working with you and with the BLM, too. And hopefully, this is a kind of a bill that we will be able to get through without too much trouble. We are only going to be in probably until this Saturday or Sunday, so it will not be this year, but next year I look forward to starting up on it again in January when we come back in.

Ms. BOBICKI. Thank you.

Ms. BOOTH DOYLE. Thank you.

Senator CAMPBELL. Thank you, Mr. Chairman.

Senator CRAIG. Well, to the panelists, let me thank you for traveling out for the purpose of testimony on this legislation. I will work closely with your Senator to see if we cannot resolve any conflicts that might exist and move the legislation on.

Thank you very much.

Ms. BOBICKI. Thank you for your interest.

Senator CRAIG. We will hold the committee record open for how long for additional—

STAFF. Ten days.

Senator CRAIG. Ten days for any additional information that we would want to put in the files in relation to these pieces of legislation.

With that, the subcommittee will stand adjourned.

[Whereupon, at 3:38 p.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF DON AYRES TO SENATOR CHRISTOPHER S. BOND (MO) REGARDING S. 1167, THE MARK TWAIN NATIONAL FOREST RESURVEY AND BOUNDARY READJUSTMENT ACT OF 2003

I am a landowner in Stone County, Missouri who, along with many other landowners in Stone and Barry counties, has been affected by the boundary dispute with the U.S. Forest Service and the Army Corps of Engineers. A new survey was commissioned by the U.S. Forest Service that had the effect of changing the historical boundary markers that had been used for generations. In this new survey, I lost a strip of property approximately 30 feet wide including, among other things, my driveway, one-half of my garage and my entire 20' x 30' storage shed.

This inequity was addressed by your introduction of S. 1167 on June 2, 2003. My wife and I strongly urge Congress to pass this legislation and give the affected landowners relief from this boundary dispute.

This dispute has adversely affected me, both personally and professionally, in several ways, as follows:

1. Foremost is the uncertainty, aggravation, and threat of financial loss that this presents. I am faced with having to purchase what is, injustice, already my own improved land. I originally purchased this property in good faith, relying on a survey that I (and the surveyor) had every right to believe was accurate and correct. It has taken a considerable amount of my time and attention to try and find, and follow-up on, a way to resolve this problem in a fair and equitable way. You and your staff have provided such a vehicle with your proposed S. 1167.

2. I have had my property listed for sale for the last two years. The listing has had to contain a warning to any potential buyer that the legal ownership of the affected parcel and improvements is in dispute. If I am lucky enough to find a buyer not put off by this situation, I would have to repurchase this parcel from the National Forest at current market price (again) in order to legally convey it to a buyer. I know you agree that such a solution would be terribly unfair.

3. As a former active Realtor, I was in the position of having to place such a cautionary contingency in every listing for sale of property with a similar problem—and there were many. It is very difficult to sell a piece of property when the potential buyer is looking at a dispute with a large Federal agency (USFS). In at least one instance I know of, a listing was withdrawn because of the uncertainty of the dispute.

4. Finally, this is simply an inherently unfair situation that deserves Congressional intervention.

I would like to express my appreciation for your, and Congressman Blunt's efforts in introducing legislation to remedy this unfair situation.

STATEMENT OF JAMES DOYLE, GENERAL PARTNER, ENVIRONMENTAL
LAND TECHNOLOGY, LTD.

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to appear before you today to testify on behalf of S. 1209, a bill to provide for the acquisition of property in Washington County, Utah, for implementation of a desert tortoise habitat conservation plan. As a resident of Idaho, I would like to extend my appreciation for the leadership of Chairman Craig and for the support and hard work of his capable staff. I would also like to thank Senator Bennett and his staff for their support of S. 1209, as well as Senators Hatch, Kyl, and other members of the Subcommittee. I am also grateful for the work of Chairman Domenici and his staff and for the cooperation of Senator Bingaman and others.

My name is James Doyle. I am a resident of Sun Valley, Idaho. Through my family's limited partnership known as Environmental Land Technology, Ltd. (ELT), a Utah limited partnership, I own the largest parcel of private property located within the Red Cliffs Reserve, which is part of the Washington County Habitat Conservation Plan, established to preserve critical habitat for the desert tortoise in southern Utah. It is in connection with my property in Utah that I appear before you today.

Simply stated, S. 1209 is what is commonly referred to as a legislative taking or legislative condemnation bill. This legislation is a measure of last resort. It is a measure appropriately reserved for enactment in only the most extreme cases. I believe, for reasons which I would like to discuss with you today, that this is such a case.

S. 1209 provides a fair resolution to what has been a costly and protracted process which, absent this legislation, will not be resolved by itself. It is a resolution to a process that the government originally estimated would take no more than one year to complete. That one year has now stretched to fourteen. This protracted process has cost me my business. To cover costs of holding the property and getting the government to meet its obligations, I have had to sell my business assets, including my airplane and my office building in St. George, Utah. I have also had to sell my home in St. George and my family home in Idaho. Ironically, the Department of the Interior has from the outset characterized the acquisition of my land in Utah as a high priority acquisition, but the Department has yet to include the necessary funding to complete the acquisition in any of its budget requests. Now, creditors have started foreclosure on my land. I have a signed forbearance agreement which suspends the foreclosure activities pending the successful completion of this legislation. It is for these reasons that the passage of this legislation is urgently needed.

Upon enactment, S. 1209 will immediately vest all of my rights in my Washington County property in the United States government. Thereafter, the Department of the Interior and I will have 90 days to reach a negotiated agreement on fair compensation for this land. If we are unable to reach an agreement, the Secretary of the Interior is required to initiate a proceeding in the Federal District Court for the District of Utah for a judicial determination of just compensation.

Whether or not the compensation is determined through negotiations or by the Federal Court, this bill provides a choice of payments in cash, credits in a surplus property account that can be used to bid on surplus U.S. property, or through intra and interstate land exchanges as originally contemplated in the HCP agreement. These provisions, for which there is congressional precedence, are included to afford greater payment flexibility than a cash outlay only. S. 1209 also provides an upfront payment in the amount of \$15 million which will enable me to forestall forfeiture of any more of my property to creditors. This amount is well below all of the valuation estimates of my property and will be credited against final payment.

This legislation does not address the value of the land. It is not a legislative end run around the government's appraisal process. On the contrary, this legislation allows for the determination of fair market value according to the standards set forth in the Uniform Appraisal Standards for Federal Land Acquisitions prepared by the Department of Justice and the Uniform Standards of Professional Appraisal Practice (USPAP). Absent a negotiated settlement, the courts will decide the value of the land through this appraisal process and this legislation does not, in any way, legislate a value to the land.

I believe it is important to draw a distinction between the determination of economic value for property within a habitat conservation area and the biological value of that property. In other words, the question about whether the government should pay a certain price to preserve a critical habitat is very different from the determination of fair market value of that property. Fair market value, highest and best use, is determined pursuant to established law, including section 309(f) of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104-333), and generally accepted appraisal standards. On the other hand, the value of property as critical habitat is far more illusive and rooted more in public policy than appraisal standards.

In recent years, there has been considerable controversy surrounding certain land purchases by the Department of the Interior. Critics have argued that the government has paid too much for the land it has acquired. Admittedly, appraising land is not a fine science. There are, however, safeguards which protect the public. One such safeguard is included in this legislation which provides for a judicial determination of value if an agreement cannot be reached with the Department of the Interior.

Since 1990, when the desert tortoise was first listed as endangered and the time when the land that now lies within the Red Cliffs Reserve was identified as critical habitat, every attempt to resolve this matter has been unsuccessful. I have ex-

hausted both my personal and company resources trying to obtain fair compensation for my property. I have run out of money and can no longer hold this land. After reviewing alternatives with officials in the Department of the Interior and with members of the Utah delegation, and taking into account pending foreclosure action, we have concluded that this legislation is the only viable option.

It is important to mention that legislation similar to S. 1209 has twice passed the House of Representatives in the 106th and 107th Congresses. I am grateful for the cooperation and support of members in both the House and the Senate.

I would like to briefly summarize the events and circumstances which have led me to this position. Time will not permit a detailed review, but I would be pleased to provide whatever additional background information you may desire.

I am by profession a land developer. I have developed lands throughout the United States and in several foreign countries. In 1981, I began to focus on potential development property north of the City of St. George, Utah, as part of a logical growth pattern for the City. This property is one of the last remaining prime developable properties in the Southwest. The State of Utah owned the land, which it had acquired as part of its in lieu selection and which was administered by the State and Institutional Trust Lands Administration on behalf of the State school system. Over the next few years, 2,440 acres of this land was approved for a predevelopment lease, and in 1985, my business acquired the lease for this property. Thereafter, I worked closely with the Washington County Commission, as well as the cities of St. George and Washington, in preparation for the development of what was intended to be the largest single real estate project ever developed in that part of the State. We regularly met with the government officials, financial backers, and engineering firms and prepared initial engineering studies, proposals for transportation quarters, multiple golf course layouts, bubble diagrams for the various development units, and a major transportation artery that would traverse the development property. All of these efforts are fully documented and can be easily verified by public records.

My company performed considerable onsite work in surveying and staking the roadways, golf courses, and developments. Utility layouts for water, sewer, and power were established. Extensive rights of way were negotiated and agreements were reached with the City of St. George in anticipation of annexation by the City of various parts of the project and the location of a debris basin and water storage tanks on the property. From 1985 through 1989, I also spent considerable time and money in converting the development lease into a fee title and obtaining additional water rights for the property. I also applied for an additional 9,560 acres of State lands which was being considered as part of the master plan development project. By the end of 1989, I had lined up financial partners and was anticipating a ground breaking for the initial phase of the project in the summer of 1990.

Then, in March 1990, the U.S. Fish and Wildlife Service listed the desert tortoise as an endangered species. Initially, neither I nor the local city and county officials understood the impact of this decision. We were informed that the land could not be developed until such time as the Fish and Wildlife Service completed a considerable biological assessment and field work necessary to determine the critical habitat for the tortoise. In effect, a large portion of the County was placed off limits to development until the government could determine which parts of the land were needed to protect the tortoise.

Although all on-site work had ceased with the listing of the desert tortoise, and because no one was certain which lands would be needed, over the next few years we continued forward with our planning and work under the assumption that at some point we would be allowed to proceed with our development subject to some reasonable restrictions for protecting the tortoise. By 1994, it became apparent that the Federal government intended to designate a 60,000-acre tract of land immediately north of St. George, including our 2,440 acres, as the desert tortoise preserve. In 1996, the Habitat Conservation Plan went into effect, the Bureau of Land Management created the Red Cliff Reserve, and a fence was placed around my land, further enforcing the on-site work prohibition that went into effect in 1990. The HCP also destroyed the option agreement I had signed for the additional 9,560 acres.

As soon as it was clear that the Federal government intended to prohibit the development of my land, officials with the Department of the Interior assured me that a quick equitable solution could be reached. They represented that the process of acquiring my land would take no longer than a year. The time to complete the acquisition was very important because conventional financing needed to hold the property was not available. Even with a high loan-to-value ratio, bankers were unwilling to lend money against the land without a clear payoff schedule, due to the fact there was no consistency or certainty in payment of funds from the Federal gov-

ernment upon which banks could rely. Today, virtually all of my net worth is tied to this land. I have no other income-producing property, investments, or businesses. To simply sustain this effort to get the government to discharge its obligation to me, I have had to borrow substantial amounts of money, sometimes at interest rates as high as 100 percent. Representations were made that Federal money would be available to help defer the acquisition costs. Unfortunately, those representations never materialized and I have since run into one dead end after another, turning to Congress after having pursued and exhausted all of the other known methods by which to receive compensation for my land save litigation against the federal government and Washington County.

The other private land owners within the HCP boundaries and I originally proposed that Section 10 permits be issued to allow us to develop our land consistent with a plan to protect the tortoise habitat. The HCP Steering Committee concurred and voted favorably on that recommendation. However, the Federal government did not approve this approach and determined all of the land within the HCP would be off limits to development. BLM proposed instead an interstate land exchange involving an exchange of all the private lands within the Reserve for lands of comparable value in southern Nevada. Although we pursued this effort for more than two years, it ultimately failed for various reasons unrelated to the private land owners in Utah.

Within the boundaries of the 60,000 acres of the Reserve, there were approximately 21 private and non-federal government land owners. The use of this large tract of land varied from grazing to development. My property was identified by the Department as biologically significant for the gene pool exchange among different populations of the tortoise, and as such was originally slated as a high priority acquisition among the land holdings within the HCP. Despite this priority designation, the Department of the Interior nevertheless proceeded to acquire, by purchase or exchange, the lands of all the other private land owners. I was told that the rationale behind this acquisition sequence was the government's desire to first acquire the smaller holdings. Ironically, many of these smaller holdings were held by interests with far greater staying power than I. The Department of the Interior has spent nearly \$50 million in direct purchases, cash equalization payments, and costs. To date, the government has acquired approximately one third of my land.

After the Nevada exchange fell through, I was encouraged by BLM to enter into an Assembled Land Exchange Agreement with BLM whereby we would choose comparable lands within the State of Utah to be exchanged for my lands. I signed the Agreement and spent nearly a year looking for comparable lands within the State. By late 1997 and early 1998, it appeared we were moving toward possible exchanges.

In 1998, however, I had reached a point where I could no longer hold the land without receiving some compensation to pay off creditors. Under protest, I agreed to a series of sales in which approximately \$5.3 million was paid by the BLM in exchange for 349 acres of my land. This was done based on a flawed appraisal promoting a clear downward bias as to value, which had been provided by appraisers recommended by BLM. My creditors were demanding payment, and the government knew it. At closing, the Federal officials, knowing of my financial situation, reduced the amount on which we had previously agreed. Reluctantly, I agreed to a closing where over \$10 million worth of my real estate was sold to the Federal government for less than half of its value. Of the proceeds that I received, I had to pay 30% off the top to the State of Utah, based on my original purchase agreement for the acquisition of the state trust lands. Most of the rest went to creditors who had lent me money to cover development and holding costs.

On another occasion, the BLM identified a 505-acre parcel near Leeds, Utah for an exchange. I borrowed a substantial amount of money and proceeded to resolve several closing issues, which included clearing the property with the Washington County Water Conservancy District, engineering evaluations of the property, purchasing water rights, and other related work. Then, after ten months of effort, and shortly before the planned closing date, I received a letter from BLM which indicated that for archeological reasons the 505 acres was being withdrawn from consideration.

Discouraged and heavily in debt, I began to look for comparable lands outside of Washington County for possible intrastate land exchanges. In 1996, President Clinton created the Grand Staircase National Monument. Though it was not anticipated at the time of its creation, by 1998, the Monument had a significant adverse impact on my ability to complete an intrastate exchange. Because lands within the designated area of the Grand Staircase included both Federal and non-federal land, the Department of the Interior and the State of Utah commenced a massive exchange to consolidate Federal holdings within the Monument.

In September 1998, the then-Acting Director of the Utah office of BLM concluded that because of the large Federal/State exchange for the Monument, there were no longer sufficient comparable lands within the State of Utah to complete an intrastate exchange for my lands within the HCP. At this time, the Acting Director recommended a direct purchase by the Department of the Interior of my land as the most feasible approach to acquisition. Without the possibility of an intrastate exchange, my only remaining options were a direct Federal purchase, congressionally approved interstate land exchanges or legislative condemnation.

Since 1998, I have unsuccessfully pursued both interstate land exchanges and a small intrastate exchange. I have traveled to various sites around the country from California to Florida looking for interstate exchange sites that might meet with Congressional approval. I have met with literally dozens of BLM, Forest Service, county, and municipal officials in the States of Idaho, Utah, Nevada, New Mexico, and Arizona.

Because of the difficulties inherent in an interstate land exchange, officials at the Department of the Interior continued to encourage a direct purchase. Based on preliminary value estimates, BLM requested \$30 million in the FY2000 budget cycle for the purchase of land within the Washington County HCP. In discussions with Department officials, I understood that most or all this money was to be made available to acquire a significant portion of my lands.

The FY2000 monies were initiated by and included in the BLM land acquisition account and, along with the entire BLM budget request, were forwarded to the Office of Management and Budget for approval. Even though the land within the Red Cliffs Reserve is acquired and owned by BLM, and BLM officials had been involved with all the prior acquisitions within the Reserve, OMB arbitrarily redirected BLM's request to the land acquisition account of the Fish and Wildlife Service Cooperative Endangered Species Conservation Fund. Presumably OMB transferred the funds to the Fish and Wildlife Service account because it involved the purchase of lands within an existing HCP. Not surprisingly, the Fish and Wildlife Service felt no compelling interest to purchase property for BLM. This bifurcation of responsibility within the Department effectively left me in a bureaucratic "no-man's-land." I received none of the money originally requested by BLM for the partial acquisition of my land.

My efforts and the efforts of others to resolve this situation have been totally unavailing. The government has repeatedly acknowledged its obligation to acquire my land, and has characterized the acquisition of my land as a high priority. However, the Department has failed to request sufficient monies for this acquisition in any budget request.

I have reluctantly concluded that, although this property has been designated as a high priority acquisition, it is clear there is no real incentive for the Department of the Interior to timely complete this transaction. The Federal government has effectively "owned" my land for the last fourteen years. The land is fenced off and I have no access to it. Without having to actually purchase it, the Department of the Interior enjoys all of the benefits of ownership. Still, I have had to bear all of the holding costs, including payment of taxes and the considerable cost of getting the government to discharge its obligation.

There have been promises upon unfulfilled promises from the Department of the Interior that a solution was just yet around the next corner. But just as I reach that illusive corner, I discover it leads to yet another dead end.

S. 1209 is now the only feasible solution to this problem. I have already forfeited a portion of my interest in the property and I cannot afford to sustain this costly effort any longer. I respectfully urge the Committee to support S. 1209. I appreciate this opportunity to appear before you, and I am ready to answer any questions or provide any information that you require for your consideration of this bill.

STATEMENT OF THE WASHINGTON COUNTY COMMISSION,
WASHINGTON COUNTY, UTAH

The Washington County Commission wishes to thank the Subcommittee for holding this hearing on S. 1209, a bill to provide for the acquisition of property in Washington County, Utah, for implementation of a desert tortoise habitat conservation plan, introduced by Senator Bennett and cosponsored by Senator Hatch, that will finally acquire critical private lands within the Red Cliffs Reserve. We offer our unconditional support for S. 1209 and urge the Committee to pass this legislation to insure that our efforts to create the Red Cliffs Reserve in Washington County are fulfilled. We have also attached a copy of a letter from the Washington County Com-

mission to Secretary Norton and to the members of the Utah delegation, dated June 23, 2003, and respectfully request that it be included as part of our testimony.

The Washington County Commission has favorably dealt with the issue of endangered species in Washington County, and in particular, the desert tortoise, by working with the Federal Government and the Utah State Institutional Trust Lands Administration for many years, and has established a Habitat Conservation Plan that we have been told by many was a model for others to follow. Notwithstanding all of the good things that have happened with the plan, one thing that we continue to be sorely disappointed with is the failure to timely accomplish one of the major objectives of the Habitat Conservation Plan, which is acquisition of the land located in the Plan. The HCP agreement, which was signed by the County, the Bureau of Land Management, and the Fish and Wildlife Service, calls for the acquisition of all private lands within the Reserve. This legislation completes the acquisition of the last remaining private property which, as a result of federal action, has been left undevelopable for 14 years.

For many years there have been attempts made to acquire a very key property in the heart of the HCP owned by Environmental Land Technology, Ltd., Rocky Mountain Ventures, and James Doyle. Smaller portions of this property have been acquired; however, the main portion of the property (which is also the heart of the main area of the preserve) has not.

When we contracted to spend literally millions of local tax dollars on this Plan, together with effectively retiring over 60,000 prime acres from development, the property owners and the State School Trust were promised they would be fairly compensated, either in the form of land trades or cash buyouts. When this solution was first undertaken, we knew that this process would take some time; however, we believe that the time it has taken to finish the job has simply gone on too long. The property referred to in Senator Bennett's bill would have otherwise been developed as prime residential golf course development real estate. It always has been immediately adjacent to the Green Springs Golf Course (which is owned by the City of Washington) and related prime development grounds.

BEND METRO PARK & RECREATION DISTRICT,
Bend, OR, November 17, 2003.

Senator RON WYDEN,
Hart Senate Office Building, Washington, DC.

Senator GORDON SMITH,
Russell Office Building, Washington, DC.

Congressman GREG WALDEN,
Longworth House Office Building, Washington DC.

Re: Senate Bill 1848, Energy and Natural Resources Committee Testimony

GENTLEMAN: On behalf of the Board of the Bend Metro Park and Recreation District, please enter the following testimony into the record of the Energy and Natural Resources Committee.

The Board of Bend Metro Park and Recreation District is in support of Senate Bill 1848, directing the Secretary of Agriculture to offer to the Bend Metro Park and Recreation District approximately 170 acres of land identified as Tract A, Bend Pine Nursery. We believe that consideration in the amount of \$3,505,676 is a fair price, allowing the Park District to move expeditiously to make this property available to the citizens of Bend.

It is my understanding that the original bill, signed in December 2001, had a very simple objective of transferring the Pine Nursery property to the Bend Metro Park and Recreation District for use as a public park. Up until now this process has been controlled by the U.S. Forest Service. For whatever reason, the Forest Service did not offer the property to the District until July 17, 2003. By that time the value of the property had risen from a Forest Service estimate of \$3,000,000 to \$5,800,000, an increase of almost 100 percent, taking the property out of reach for the Park District. It is greatly appreciated that the Central Oregon delegation has moved forward to resolve this simple but very important issue.

The Bend Pine Nursery will be used as a Regional Park serving people within the boundary of the Park District, City of Bend, and surrounding communities. The preliminary site development plan calls for 22 sports fields, trails, open space, disc golf, and a neighborhood park equipped with playgrounds, skate facilities, and picnic shelters. The park will one day be one of the finest municipal recreation facilities in Oregon.

The Park District also understands that there is a provision in the bill that will require a deed restriction, allowing the property to only be used and developed for the purpose of providing recreational opportunities. The Park District's full intent is to use the property for recreation purposed, therefore the deed restriction is welcome.

Even though we are not involved in governing the Bend LaPine School District, we fully support the transfer of the 15-acre elementary school site to the school district for no consideration. The Pine Nursery master plan, prepared by the Park District, has always considered an elementary school to be located on this property as it will seamlessly be integrated into the grander concept of a community recreation and education facility.

It has been a pleasure working in a non-partisan environment to bring together the desires of this community. Senators, on behalf of the Board, I appreciate the efforts that both of you as well as Congressman Walden have given toward this important community issue. Should you need additional information from me about the intent of the Park District to use this property, please don't hesitate to call.

Sincerely,

DON P. HORTON,
Executive Director.

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